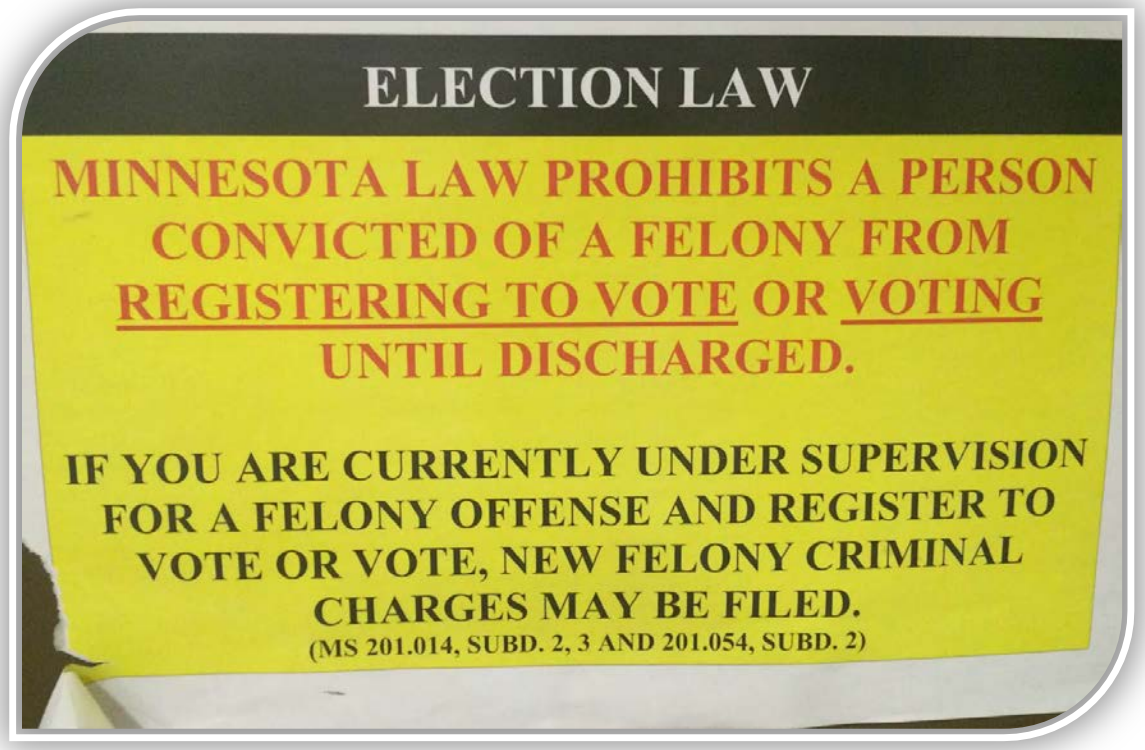



# Persistence and Change in Felon Voting Restrictions

**Ohio State Center for Ethics and Human Values**
**2/14/17**

**christopher uggen**
***university of minnesota***

# abstract

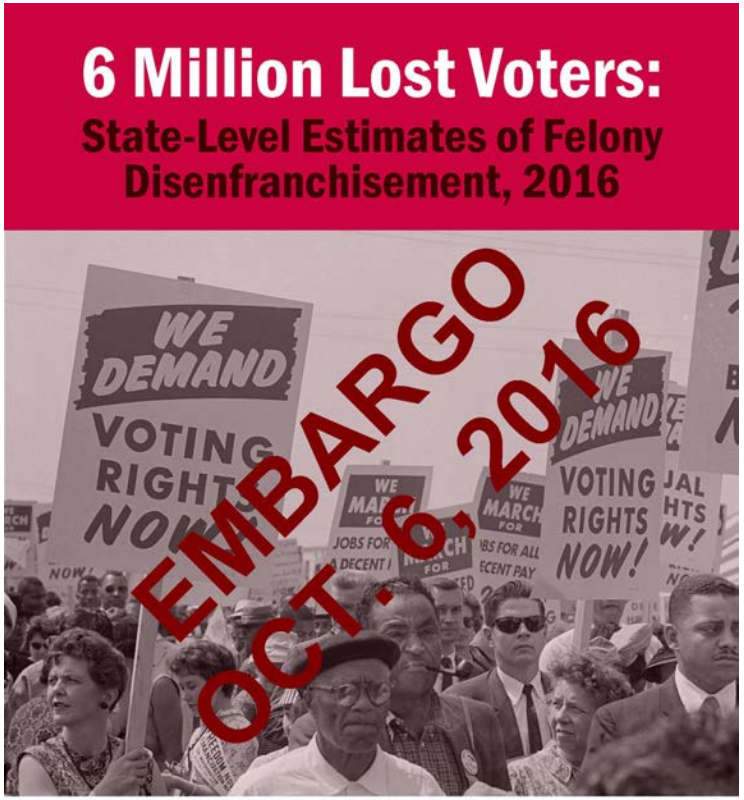
- A half-dozen defendants sat in the courtroom, all described as “model probationers” living and working in Minneapolis. But they were facing new felony and the atmosphere was tense. Their crime? Illegal voting. They did not sell their votes or stuff the ballot box, they simply arrived at their polling place and cast ballots like so many of us did. Their new felony charges arose because in 30 US states it is illegal to vote while serving a probation sentence in the community. This talk will review research and policy developments in felon disenfranchisement law and policy. After addressing the origins, scope, political impact, and public opinion on the practice, it considers the meaning of these legal restrictions in the context of contemporary debates in the United States and other nations.

# felon disenfanchisement in 2017

- ***half the states have changed***
  - **pardon power v. legislative change**
- ***Minnesota DA – 343 unlawful voters***
  - **new felony for "model" probationers**
  - **DA wants legal change, but still prosecuting cases**
    - **wrongfully obtaining assistance, not violence**
    - **average 23m probation, 27 days jail, $279 fine**
- ***Sentencing project report (M. Mauer)***
  - **with Ryan Larson & Sarah Shannon**
  - **law, social science, & social change**

# topics

- ***New report***
- ***New voting challenges***
- ***Basic questions***
- ***Recent change***
- ***Ohio and Minnesota context***



**Some feel that people convicted of a crime who are in prison should have the right to vote. Others feel they should not have this right. What about you? Do you think people in prison should have the right to vote? (A = no; B = yes)**

**A. No**

**B. Yes**

**Now how about people convicted of a crime who have served their entire sentence, and are now living in the community. Do you think they should have the right to vote? (A = no; B = yes)**

**A. No**

**B. Yes**

**Now how about people convicted of the illegal trading of stocks, who have served their entire sentence, and are now living in at the community. Do you think they should have the right to vote?**

A. No

B. Yes

**Now how about people convicted of a violent crime, who have served their entire sentence, and are now living in the community. Do you think they should have the right to vote?**

A. No

B. Yes

**Now how about people convicted of a sex offense, who have served their entire sentence, and are now living in the community. Do you think they should have the right to vote?**

A. No

B. Yes

## What about those sentenced to probation, and living in the community? Do you think people on probation should have the right to vote? (A = no; B = yes)

A. No

B. Yes

**What about those who have been released from prison on parole and are living in the community. Do you think people on parole should have the right to vote? (A = no; B = yes)**

**A. No**

**B. Yes**

# any tough calls?

- ***Sample***
  - **What population do we represent?**
- ***Method***
  - **Split v. sequential**
- ***Setting***
  - **Law school v. CEHV v. Public**
- ***Timing***
  - **Context: threats of voter fraud**

# 5 questions 1998-2017

1. ***Scope/impact: how many? effects?***
2. ***Origins: racialized history?***
3. ***Opinion: does public favor restrictions?***
4. ***Meaning: do felons even care about voting?***
5. ***Recidivism: is voting a form of "civic reintegration?"***

## Across the US states, the most common felon voting policy is to disenfranchise…

A. No restrictions

B. Prison only

C. Prison & Parole

D. Prison, Parole, and Probation

E. Prison, Parole, Probation, & Post-sentence

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# diversity across u.s. states

| No restriction (2) | Prison only (14) | Prison & parole (4) | Prison, parole, & probation (18) | Prison, parole, probation, & post-sentence (12) |
|---|---|---|---|---|
| Maine | Hawaii | California[3] | Alaska | Alabama[1] |
| Vermont | Illinois | Colorado | Arkansas | Arizona[2] |
| | Indiana | Connecticut | Georgia | Delaware[4] |
| | Massachusetts | New York | Idaho | Florida |
| | Maryland[6] | | Kansas | Iowa[5] |
| | Michigan | | Louisiana | Kentucky |
| | Montana | | Minnesota | Mississippi |
| | New Hampshire | | Missouri | Nebraska[7] |
| | North Dakota | | New Jersey | Nevada[8] |
| | Ohio | | New Mexico | Tennessee[9] |
| | Oregon | | North Carolina | Virginia[12] |
| | Pennsylvania | | Oklahoma | Wyoming[13] |
| | Rhode Island[10] | | South Carolina | |
| | Utah | | South Dakota[11] | |
| | | | Texas | |
| | | | Washington | |
| | | | West Virginia | |
| | | | Wisconsin | |

## Across the world, the most common felon voting policy is to disenfranchise…

A. No restrictions

B. Prison only

C. Prison & Parole

D. Prison, Parole, and Probation

E. Prison, Parole, Probation, & Post-sentence

## Across the world, the most common felon voting policy is to disenfranchise…

A. No restrictions

B. Prison only

C. Prison & Parole

D. Prison, Parole, and Probation

E. Prison, Parole, Probation, & Post-sentence

# non-incarcerated felons vote almost everywhere but the U.S.; prisoners vote in at least 40 nations (2009 – needs update)

**Table 1a. Nations without a General Prisoner Disenfranchisement Provision (N=40).**

| | | | | |
|---|---|---|---|---|
| Albania | Denmark | Italy | Netherlands | Sao Tome |
| Austria | Finland | Japan | New Zealand | Serbia |
| Bangladesh | Germany | Laos | Norway | Slovenia |
| Bosnia | Greece | Lesotho | Pakistan | South Africa |
| Canada | Iceland | Lithuania | Portugal | Spain |
| China | Iran | Luxembourg | Poland | Sweden |
| Croatia | Ireland | Macedonia | Puerto Rico | Switzerland |
| Czech Rep. | Israel | Montenegro | Romania | Turkey |

**Table 1b. Nations with a General Prisoner Disenfranchisement Provision (N=65).**

| | | | | |
|---|---|---|---|---|
| Angola | Bulgaria | Guatemala | Malta | Sierra Leone |
| Argentina | Cameroon | Haiti | Micronesia | Slovakia |
| Armenia | Cape Verde | Honduras | Moldova | St. Lucia |
| Australia | Chile | Hungary | Mongolia | St. Vincent |
| Azerbaijan | Comoros | India | Mozambique | Trinidad and Tobago |
| Bahamas | Cyprus | Jamaica | Nigeria | Uganda |
| Barbados | Egypt | Kazakhstan | Panama | Ukraine |
| Belarus | Equator | Kenya | Papua New Guinea | United States |
| Belgium | Ecuador | Kosovo | Peru | United Kingdom |
| Belize | Equatorial Guinea | Kyrgyzstan | Philippines | Uruguay |
| Benin | Estonia | Latvia | Russia | Venezuela |
| Botswana | France | Madagascar | Samoa | Vietnam |
| Brazil | Georgia | Malaysia | Senegal | Zimbabwe |

# Across the US, most of the people disenfranchised are…

A. In jail
B. In prison
C. On parole
D. On probation
E. Post-sentence

## Across the US, most of the people disenfranchised are…

A. In jail

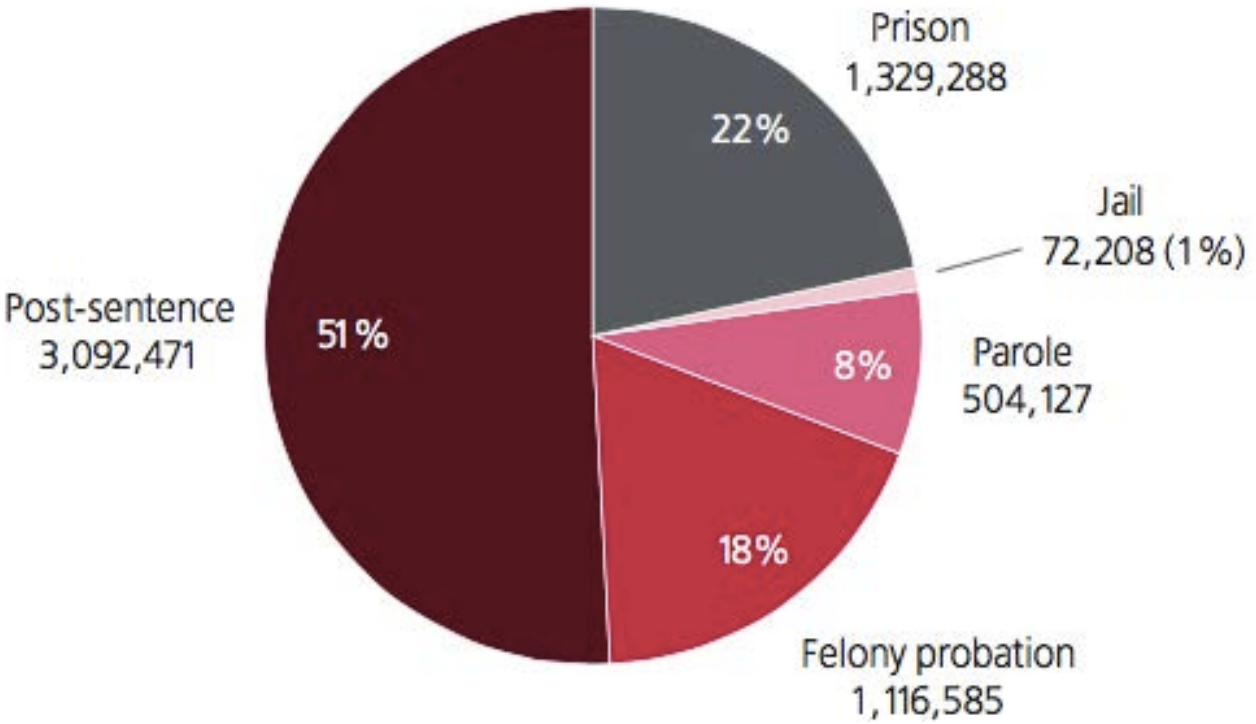
B. In prison

C. On parole

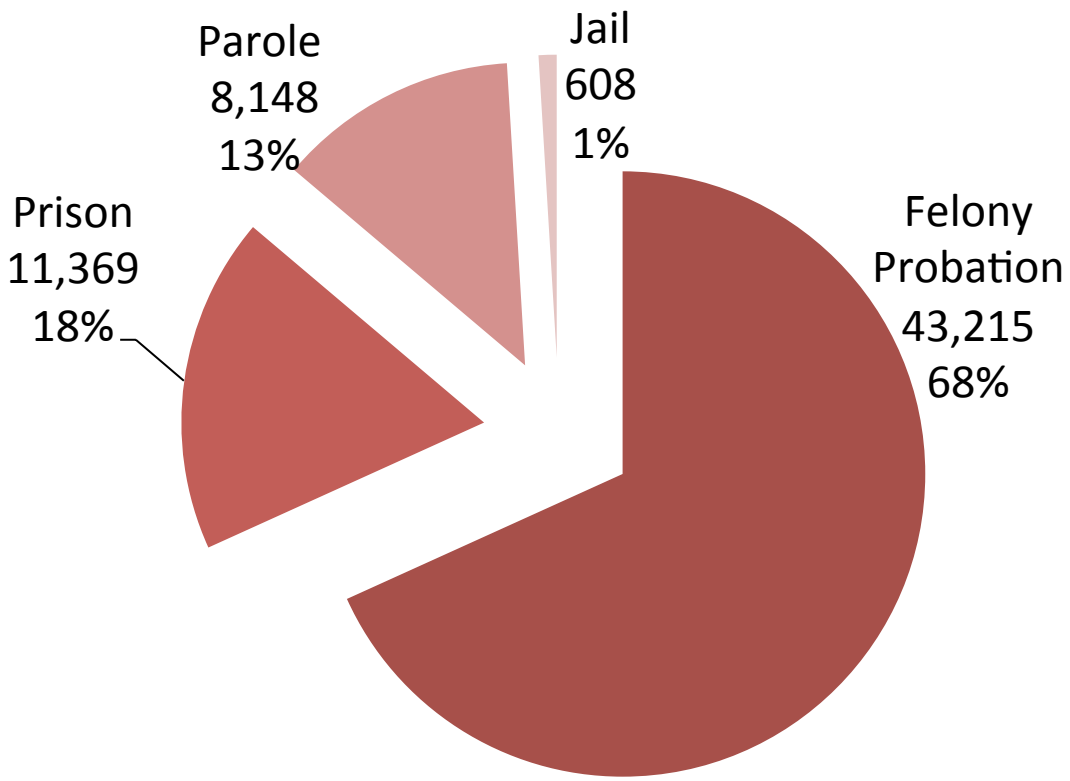
D. On probation

E. Post-sentence

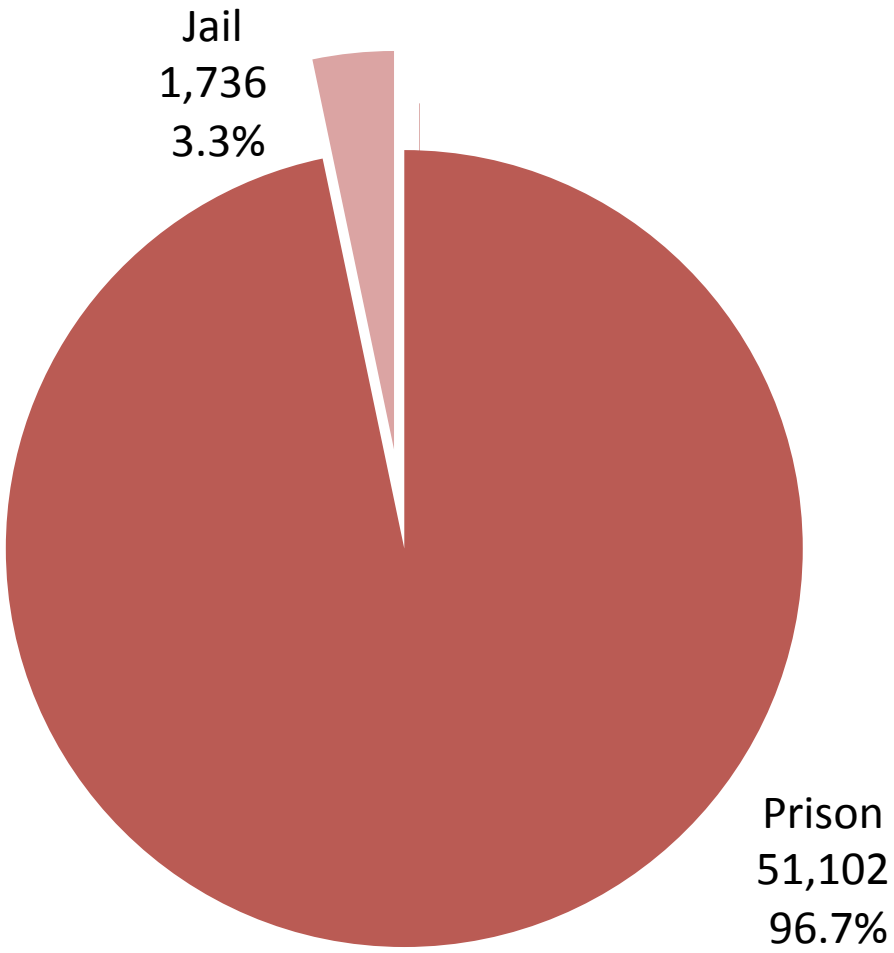
# u.s., disenfranchisement by correctional population 2016 (6.1 m; 2.5%)



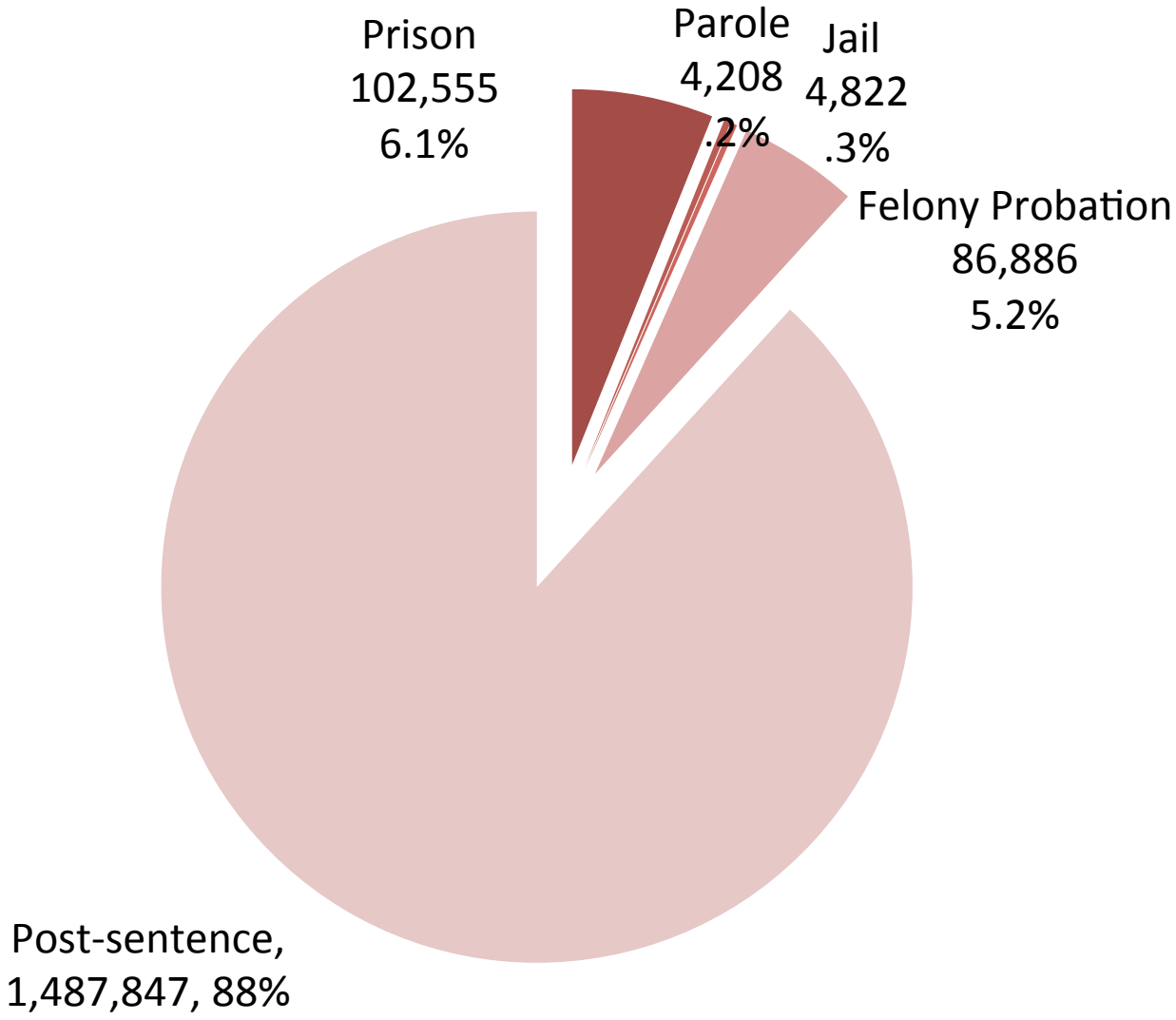
# minnesota disenfranchised (2016)



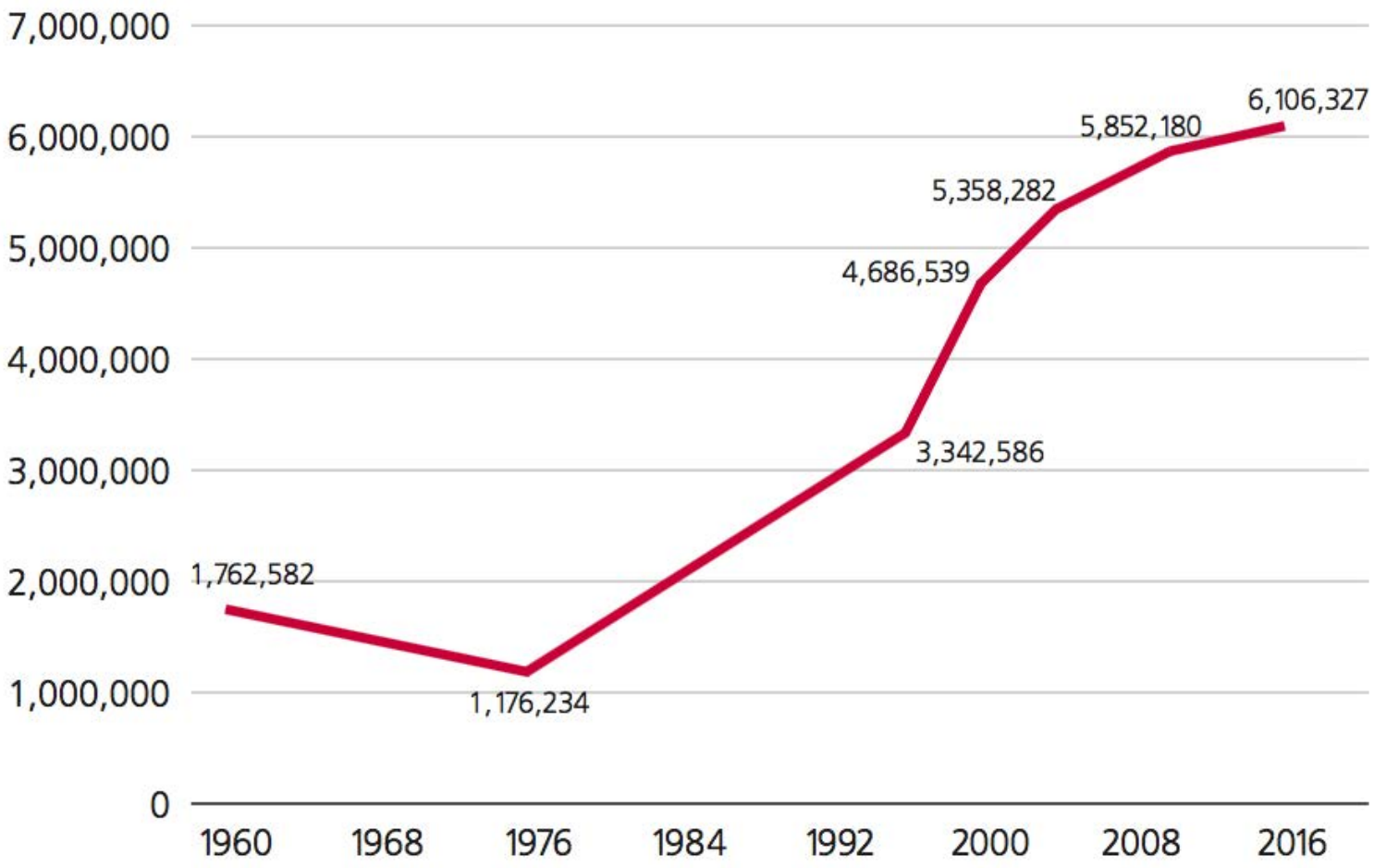
# ohio disenfranchised (2016)



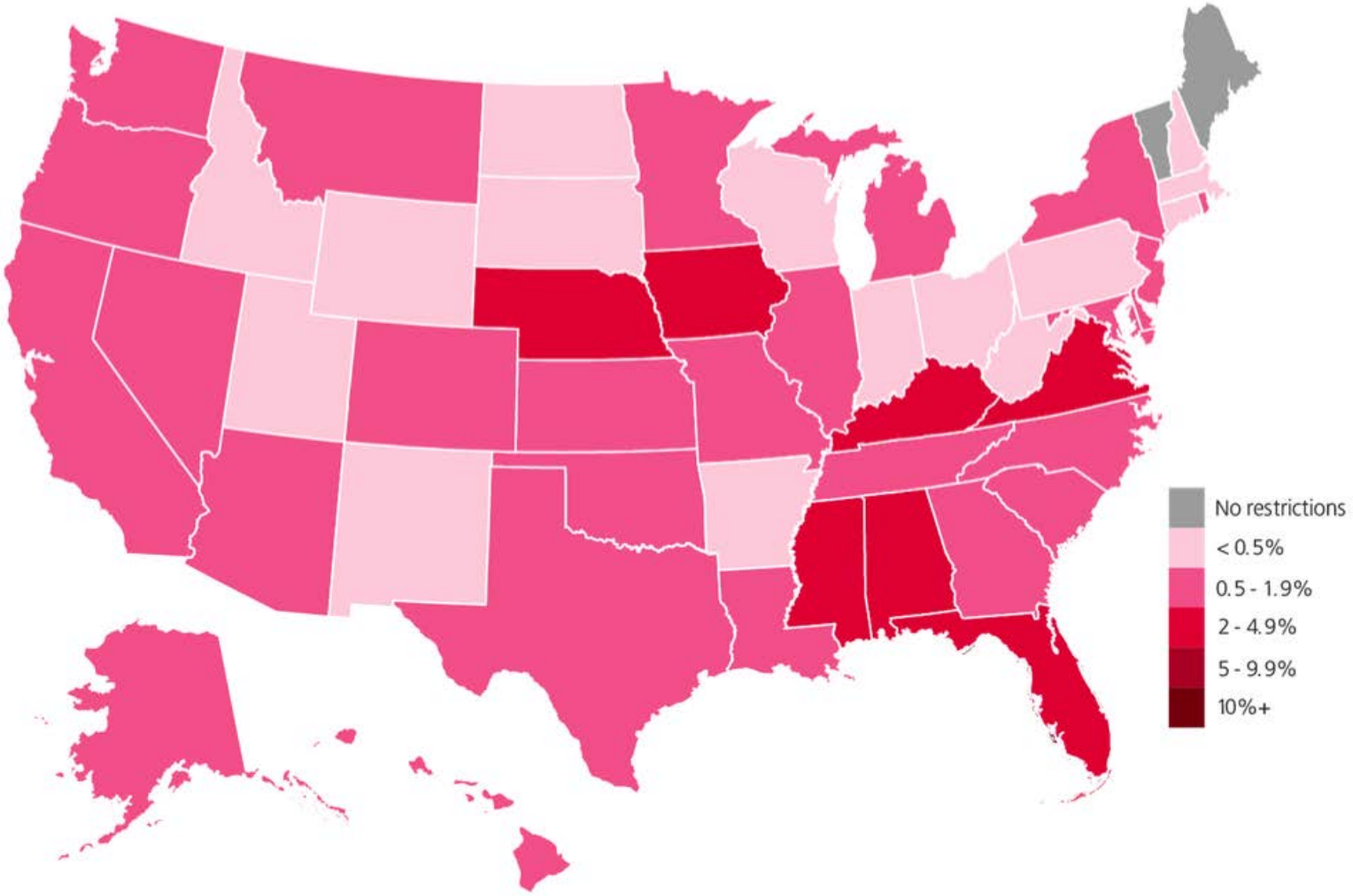
# florida disenfranchised (2016)



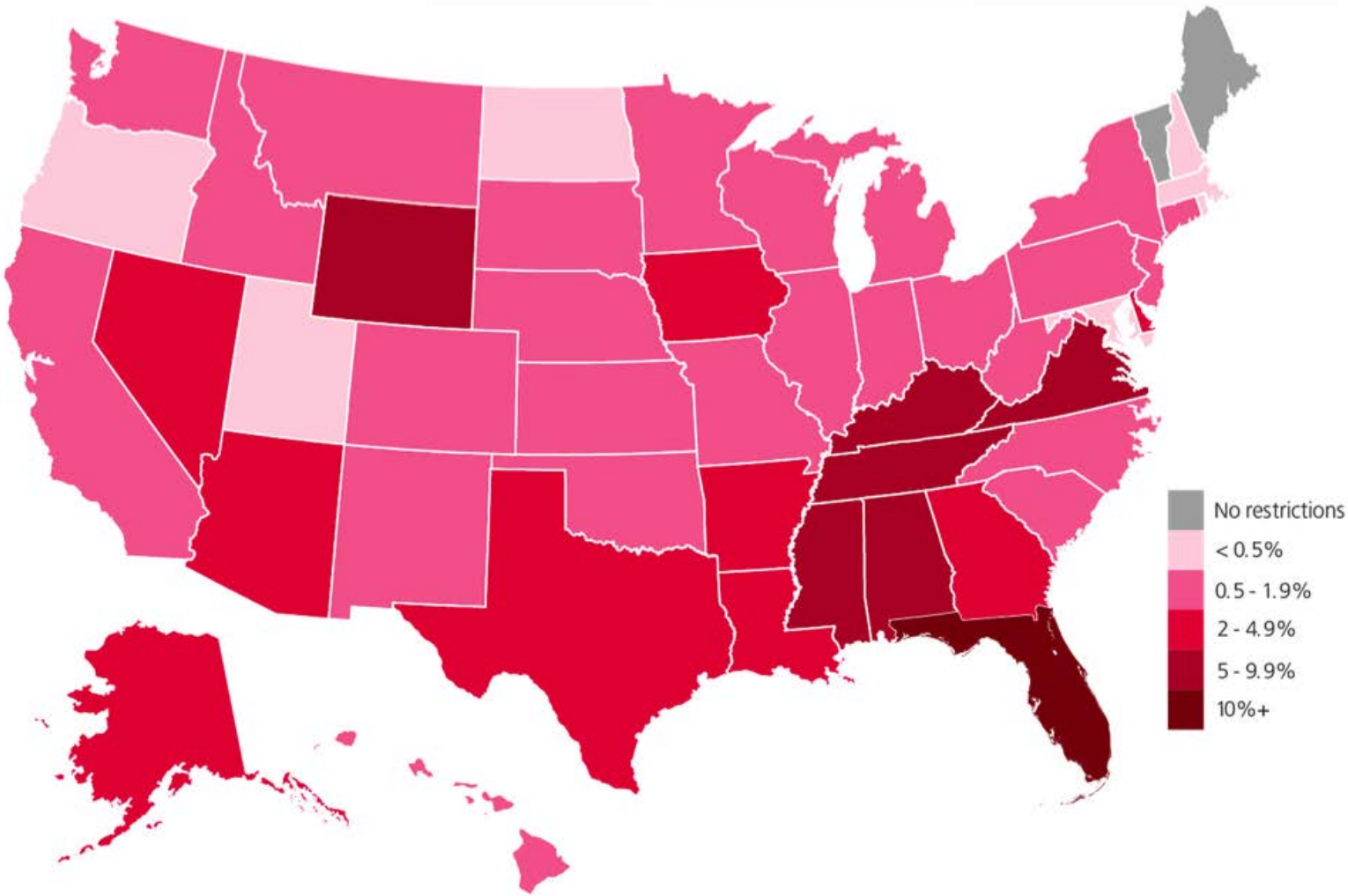
# all-time high, but leveling off



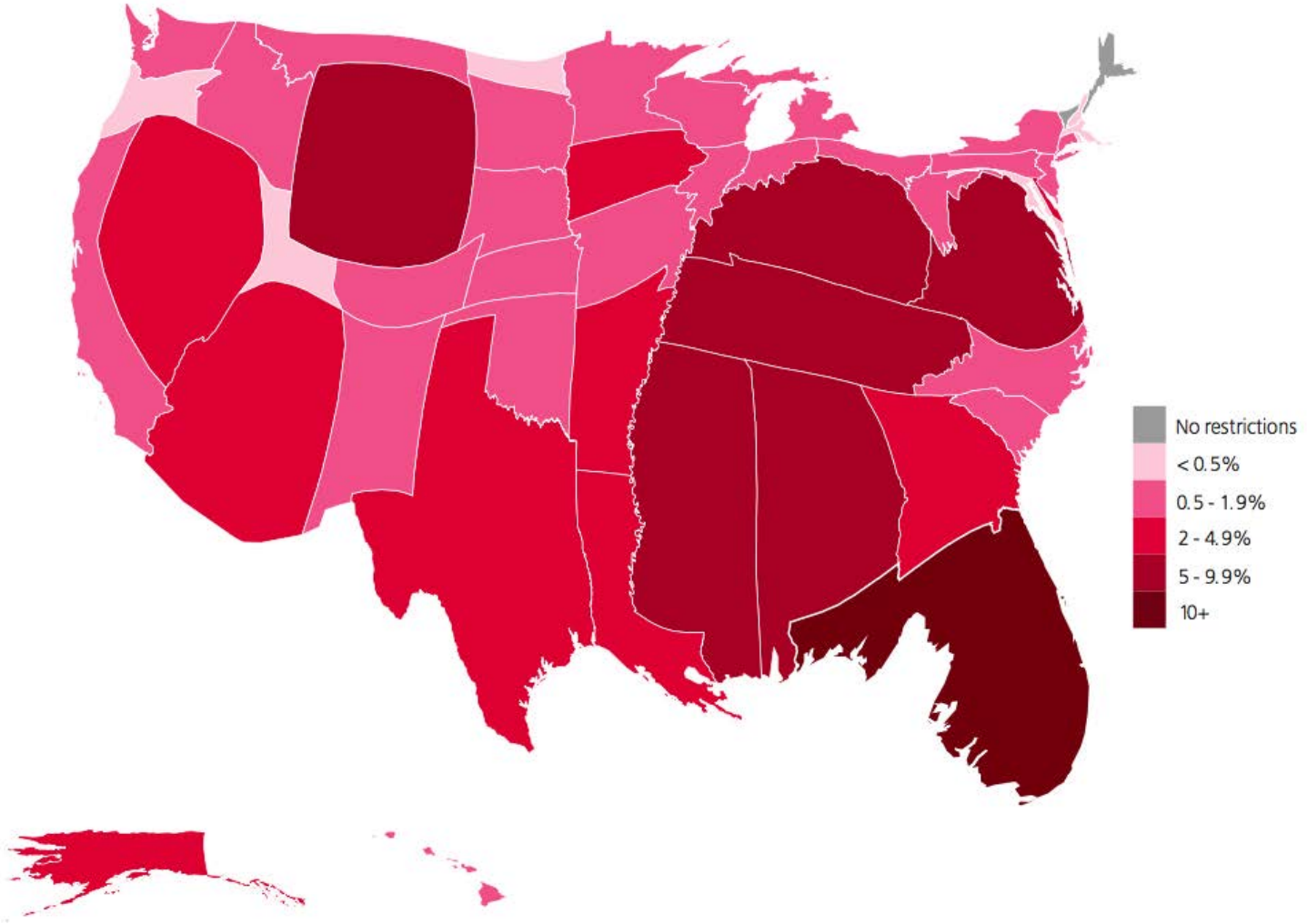
# total felon disenfranchisement rates, 1980
## (most states <2%, none >5%)



# total felon disfranchisement rates, 2016
## (average 2.5%, several over 5%)

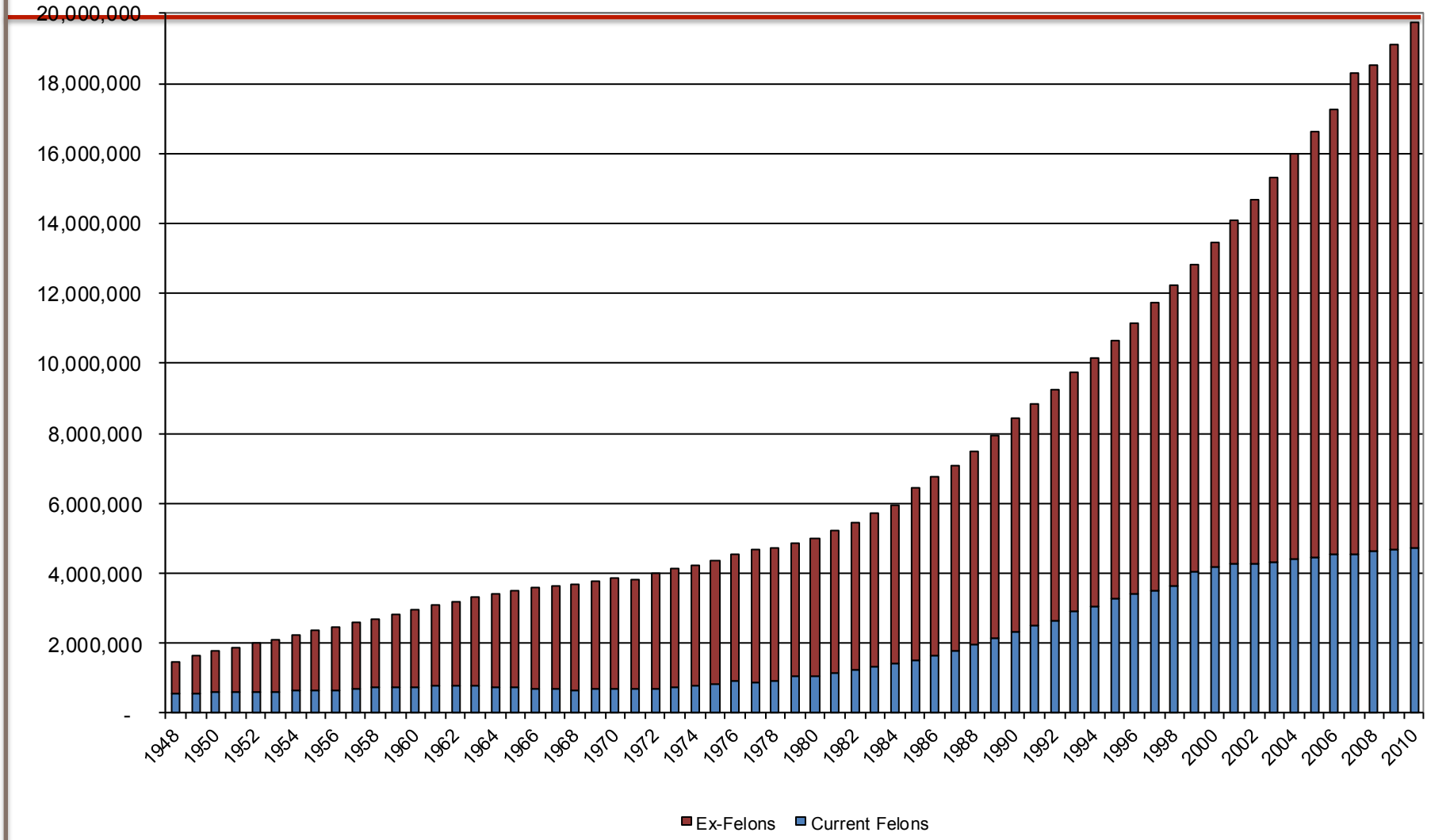


# cartogram of disenfranchisement rates, 2016

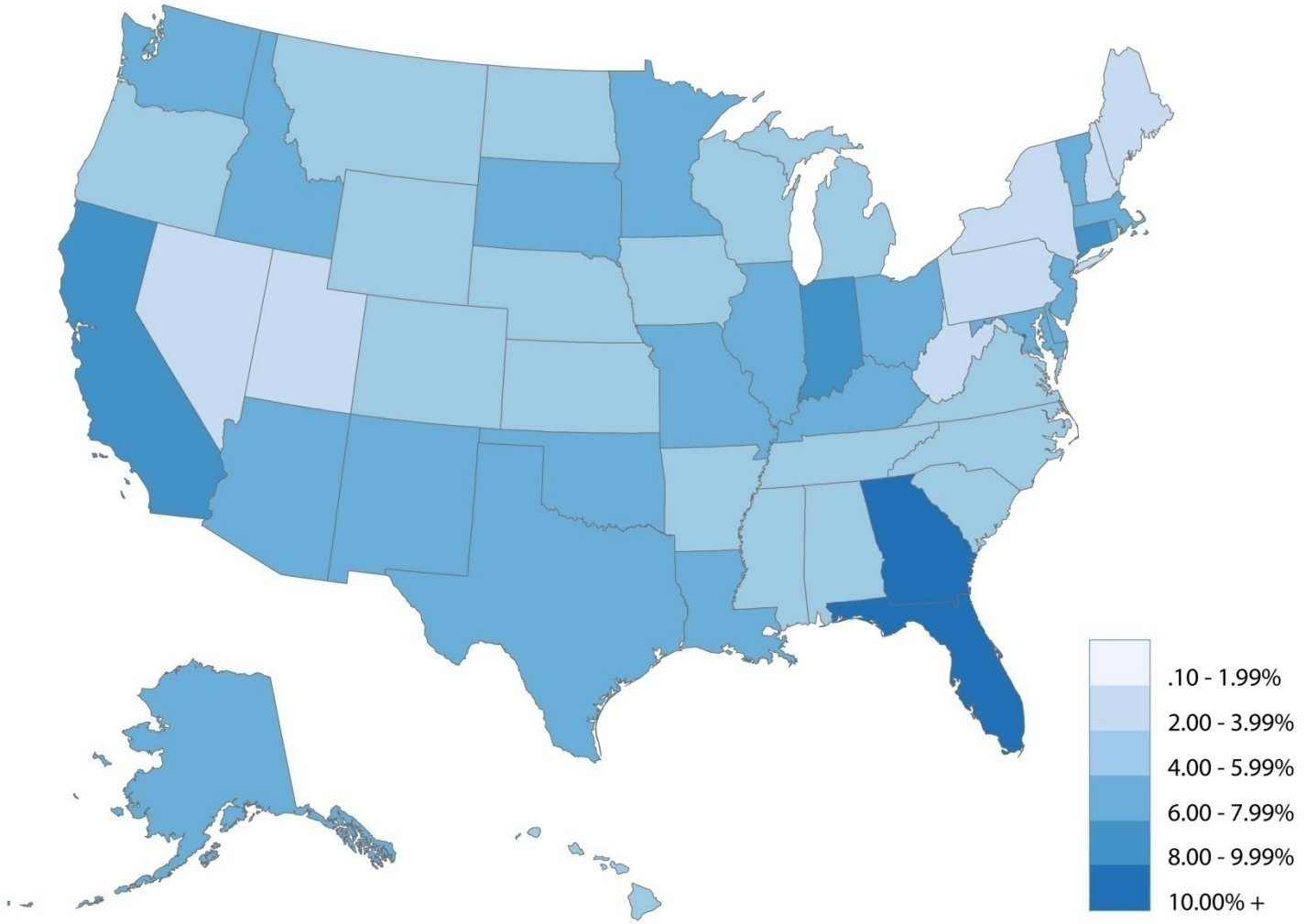


# US growth of felons and ex-felons, 1948-2010

## (w/ Sarah Shannon et al., at *Demography*)

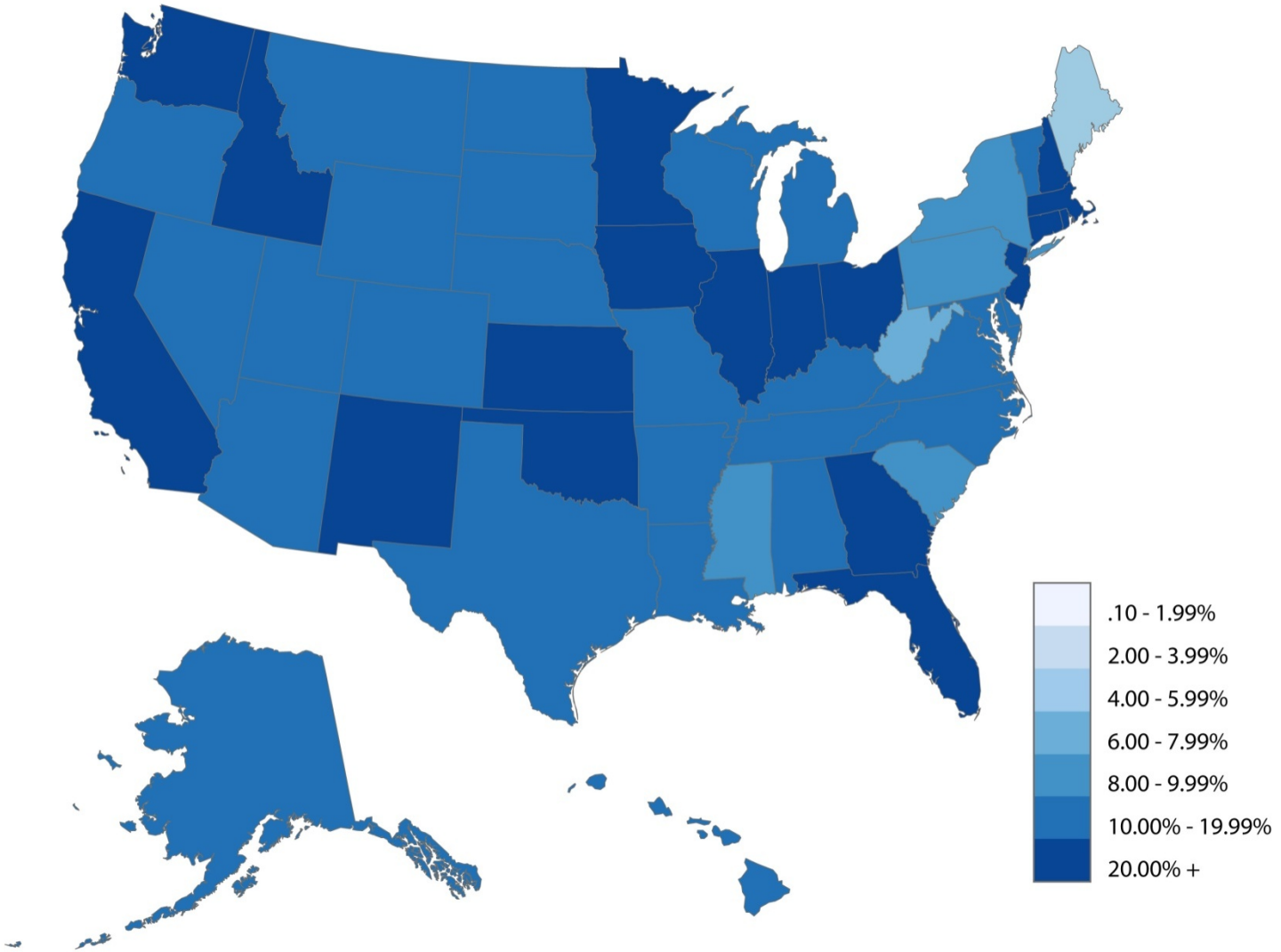


# 1980 ex-felons (2.1% of VAP)
# 2010 ex-felons (6.4% of VAP)



# 1980 African American ex-felons (1.8%) 2010 African American ex-felons (5.13%)

(Phelps: mass *probation*)



# I. political impact

**(*American Sociological Review* 2002 with Jeff Manza; *Johnson v. Bush expert report*)**

- ***Voting restrictions can affect elections***
  - **7 U.S. Senate [VA (Warner), TX (Tower), KY (McConnell), FL, GA, KY, FL +/- WY]**
  - **Bush v. Gore 2000; (Kennedy v. Nixon)**
  - **Shifts debate on other issues**
- ***[Method: Count the disenfranchised [bjs], model potential turnout [cps] and partisan vote choice [nes], recalculate election results [xls]]***
- ***[Caveat: Traci Burch (2011) finds lower turnout rates (average 22%) and Democratic preference (70-84% African American; 35% White) in FL, GA, MI, MO, and NC]***

# II. u.s. origins

## (*American Journal of Sociology* 2003, with Behrens & Manza)

- ***Race and why US has strictest felon voting bans (racism, Jim Crow, and modern day)***
  - **Greatest rate and number of citizens affected**
  - **African American vote dilution, Civil War and Reconstruction timing, legal evidence (Hunter v. Underwood 1985), other disenfranchisement**
- ***Racial composition of prisons tied to passage of restrictive felon voting laws.***
  - **Net of economics, punitiveness, time, demographics, political partisanship, size…**
  - **Especially after 1870**
  - **Maine and Vermont both 95% White**

# When were states most likely to pass felon voting restrictions?

A. 1850-1900

B. 1900-1950

C. 1950-2000

D. After 2000

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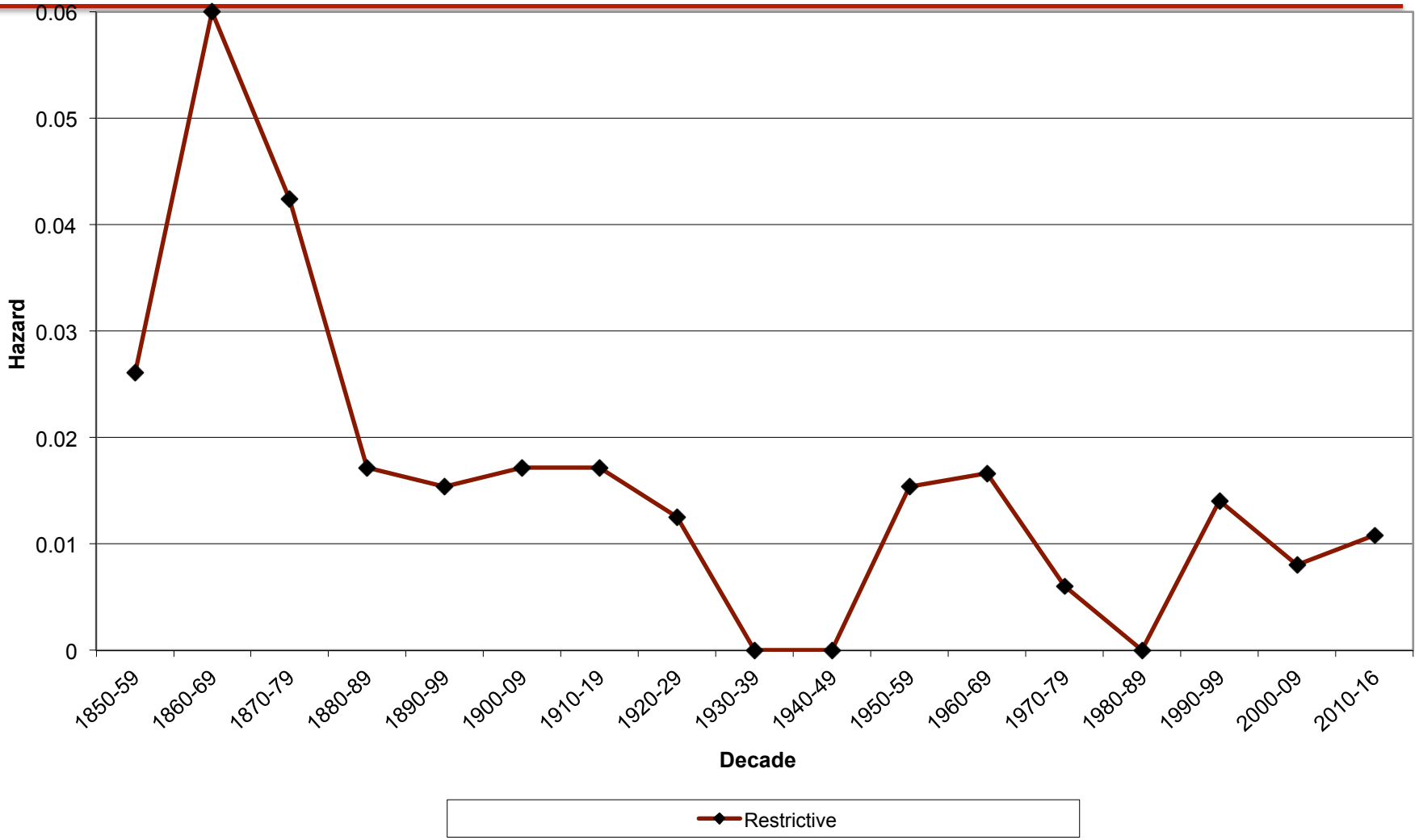
# hazard plots for the passage of restrictive felon disenfranchisement laws, 1850-2016



# hazard plots for passage of liberal & restrictive felon disenfranchisement laws, 1850-2016

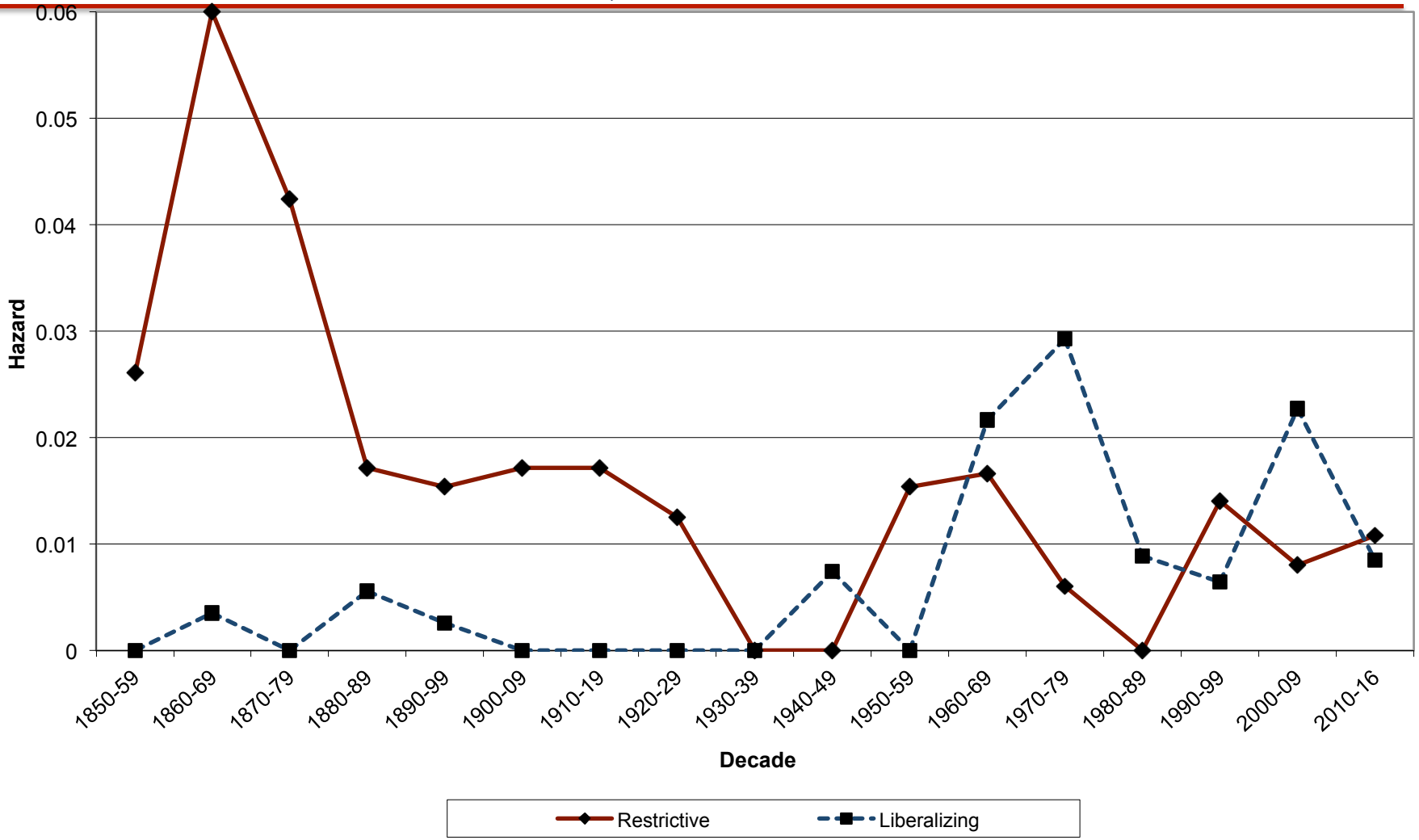


TABLE 3

RACIAL THREAT AND JUSTIFICATIONS FOR FELON DISENFRANCHISEMENT

| Jim Crow Era | Modern Era |
|---|---|
| **1894:** "Fortunately, the opportunity is offered the white people of the State in the coming election to obviate all future danger and fortify the Anglo-Saxon civilization against every assault from within and without, and that is the calling of a constitutional convention to deal with the all important question of suffrage."—*Daily Register*, Columbia, South Carolina, October 10, 1894. | **1985:** "Felons are not disenfranchised based on any immutable characteristic, such as race, but on their *conscious decision to commit an act for which they assume the risks of detection and punishment*. The law presumes that all men know its sanctions. Accordingly, the performance of a felonious act carries with it the perpetrator's *decision to risk disenfranchisement* in pursuit of the fruits of his misdeed"—U.S. District Court in Tennessee (*Wesley v. Collins*, 605 F. Supp. at 813) upholding the state's disenfranchisement law. |
| **1896:** "The [constitutional] convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race. By reason of its previous condition of servitude and dependence, *this race had acquired or accentuated certain peculiarities of habit, of temperament and of character, which clearly distinguished it, as a race, from that of the whites*—a patient docile people, but careless, landless, and migratory within narrow limits, without aforethought, and its criminal members given rather to furtive offenses than to the robust crimes of the whites. Restrained by the federal constitution from discriminating against the negro race, *the convention discriminated against its characteristics and the offenses to which its weaker member were prone*."—Mississippi Supreme Court (*Ratliff v. Beale*, 74 Miss. at 266–67) upholding the state's disenfranchisement law. | **2001:** *"If it's blacks losing the right to vote, then they have to quit committing crimes. We are not punishing the criminal. We are punishing conduct.* . . . You need to tell people to stop committing crimes and not feel sorry for those who do."—Rep. John Graham Altman (R-Charleston) advocating a more restrictive felon disenfranchisement provision in South Carolina (Wise 2001*a*). |

# New A.G. & Senate Majority Leader

**1901:** "[In 1861], as now, the negro was the prominent factor in the issue. . . . And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State. . . . The justification for whatever manipulation of the ballot that has occurred in this State has been the *menace of negro domination*. . . . These provisions are justified in law and in morals, because it is said that the negro is not discriminated against on account of his race, but on account of his intellectual and moral condition."—John B. Knox, president of the Alabama Constitutional Convention of 1901, in his opening address. (See Alabama [1901], pp. 9–15.)

**1901:** "The crime of *wife-beating alone would disqualify sixty percent* of the Negroes."—John Field Bunting (Shapiro 1993, p. 541), who introduced the ordinance at the Constitutional Convention to change Alabama's disenfranchisement law.

**2002:** "States have a significant interest in reserving the vote for those who have abided by the social contract. . . . Those who break our laws, should not *dilute the vote of law-abiding citizens*."—Senator Mitch McConnell (R-Ky.) opposing a bill to enfranchise all ex-felons for federal elections (U.S. Congress 2002, p. S802).

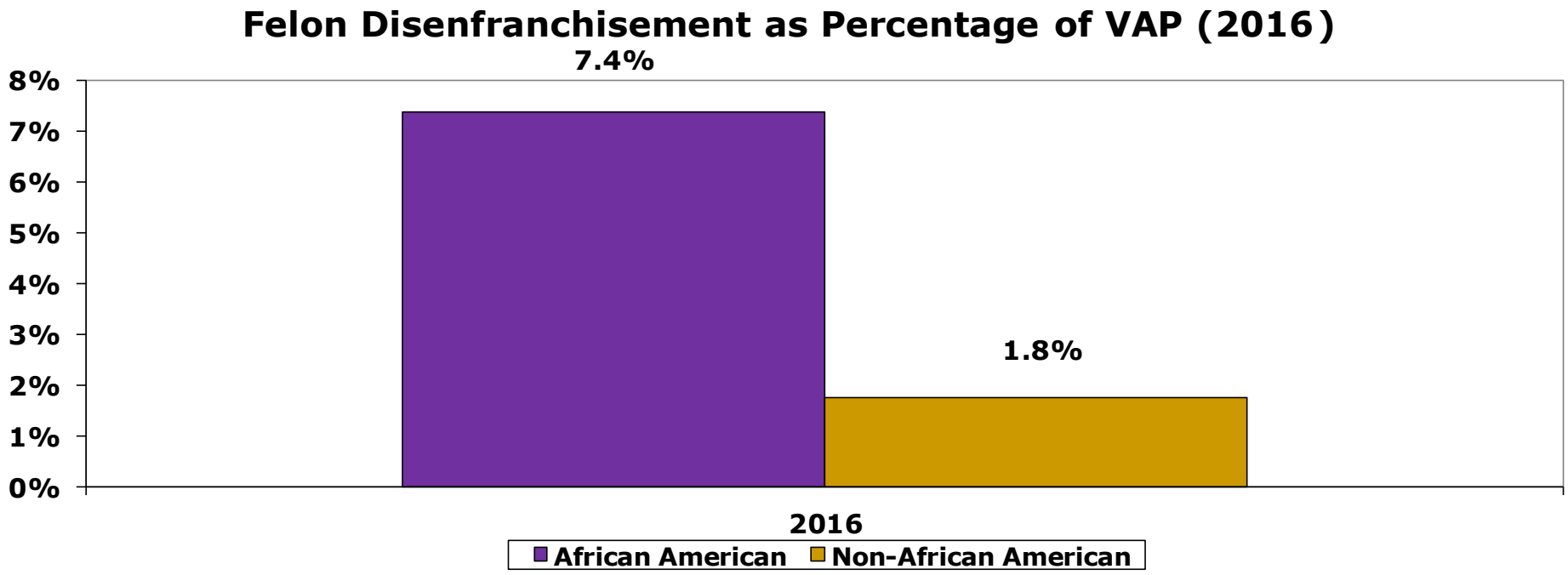
**2002:** "I think this Congress, with this little debate we are having on this bill, ought not to step in and, with a big sledge hammer, *smash something we have had from the beginning of this country's foundation*—a set of election laws in every State in America—and change those laws. To just up and do that is disrespectful to them. . . . *Each State has different standards based on their moral evaluation*, their legal evaluation, their public interest in what they think is important in their States."—Senator Jeff Sessions (R-Ala.) agreeing with McConnell (U.S. Congress 2002, p. S803).

NOTE.—All emphases added.

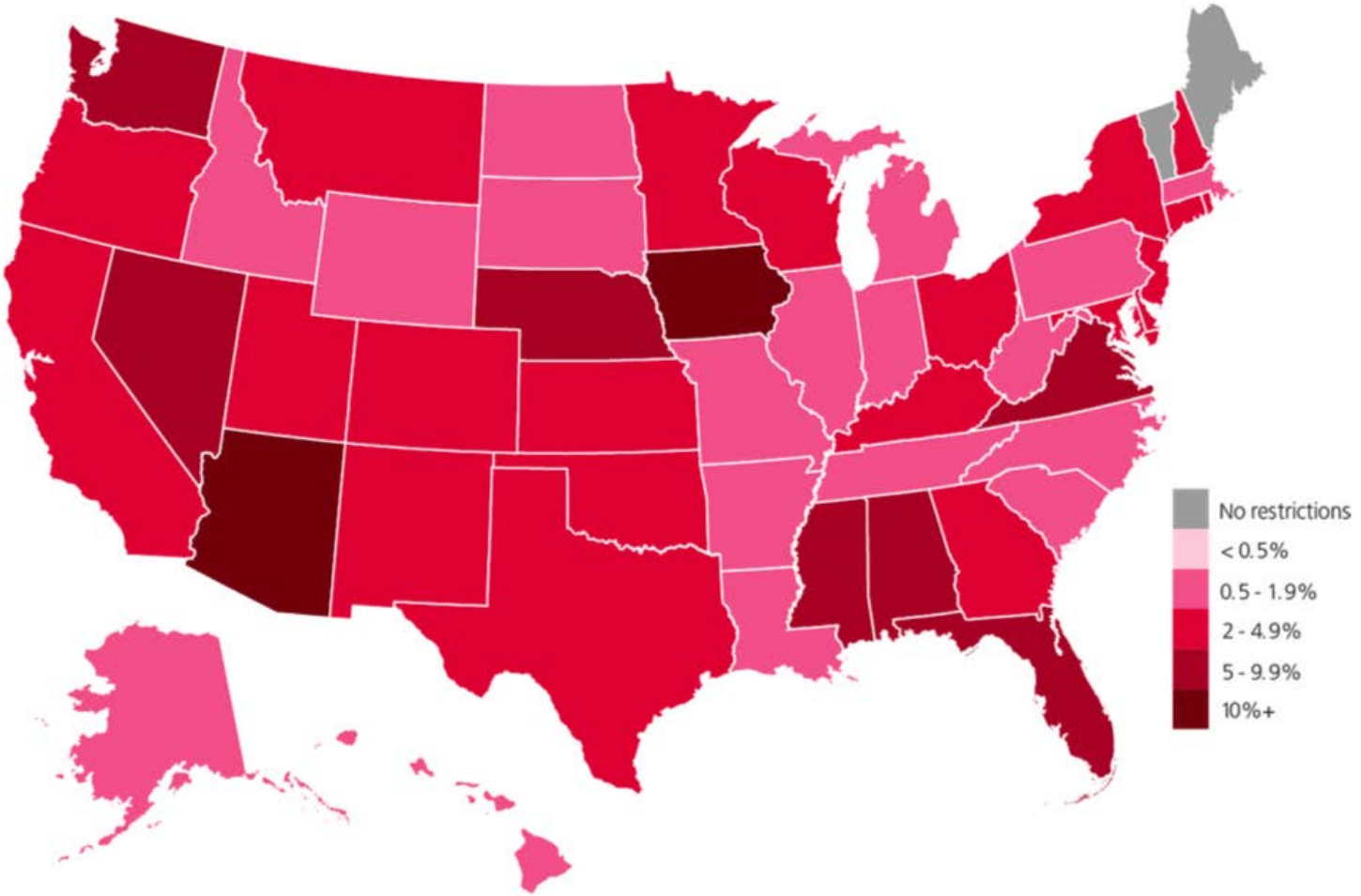
# recent change

- ***Maryland, 2016*** **– reenfranchised most probation and parole (Rhode Island, 2006)**
- ***California, 2016*** **– reenfranchised jail**
- ***Virginia, 2016*** **– Gov. McAuliffe's blanket post-sentence restoration overturned by VA Sup Ct**
- ***Delaware, 2013*** **– removed 5-year post-sentence waiting period**
- ***South Dakota, 2012*** **– disenfranchised probation**
- ***Iowa, 2010*** **– Gov. Vilsack reenfranchised post-sentence; Branstad reversed in 2011**

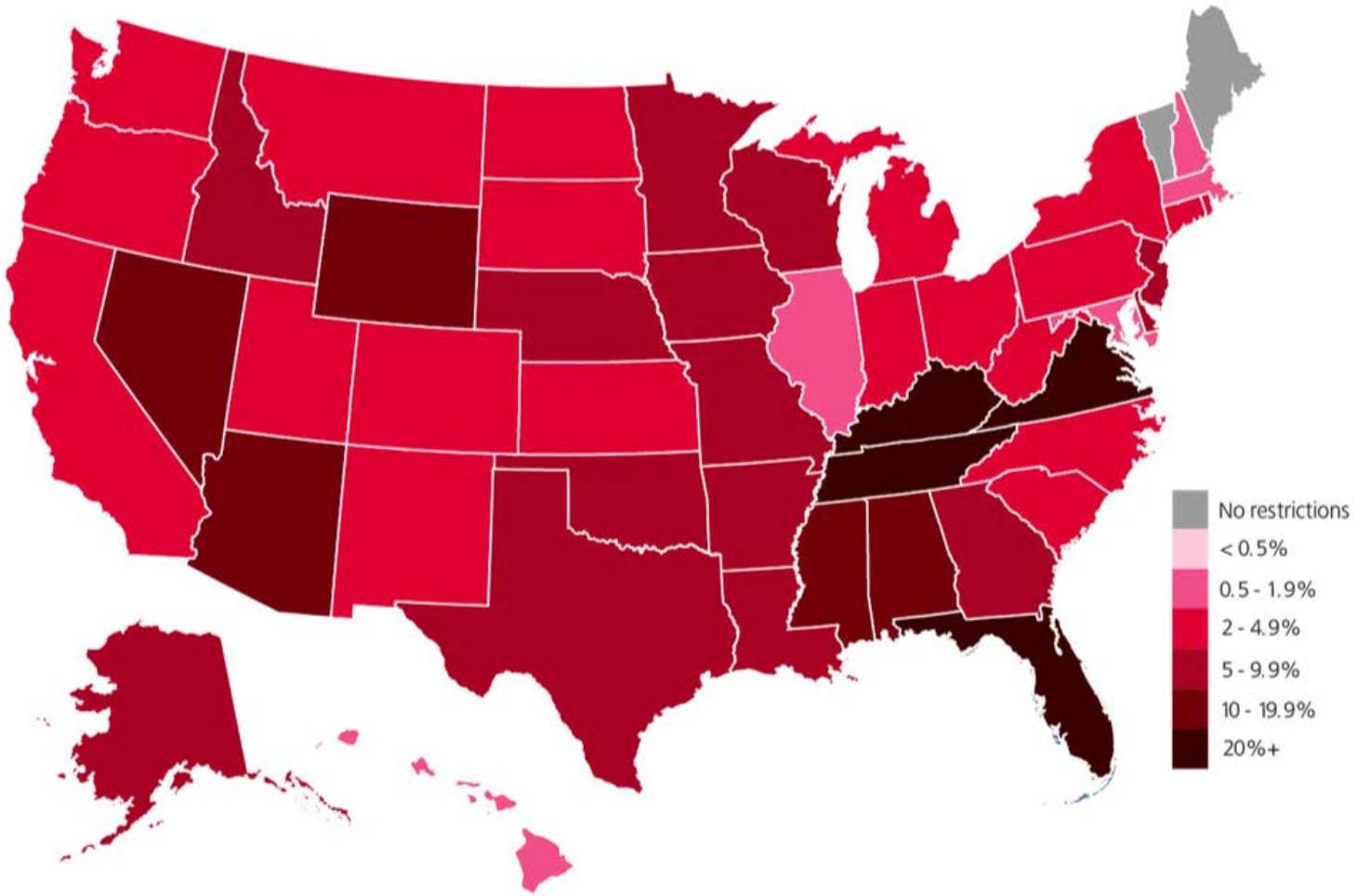
# overall vote dilution
## (Ohio: 2.3% Af. Am.; .59% overall)



# 1980 African American (average 2.9%)



# 2016 African American disenfranchisement rate (average 7.4%)



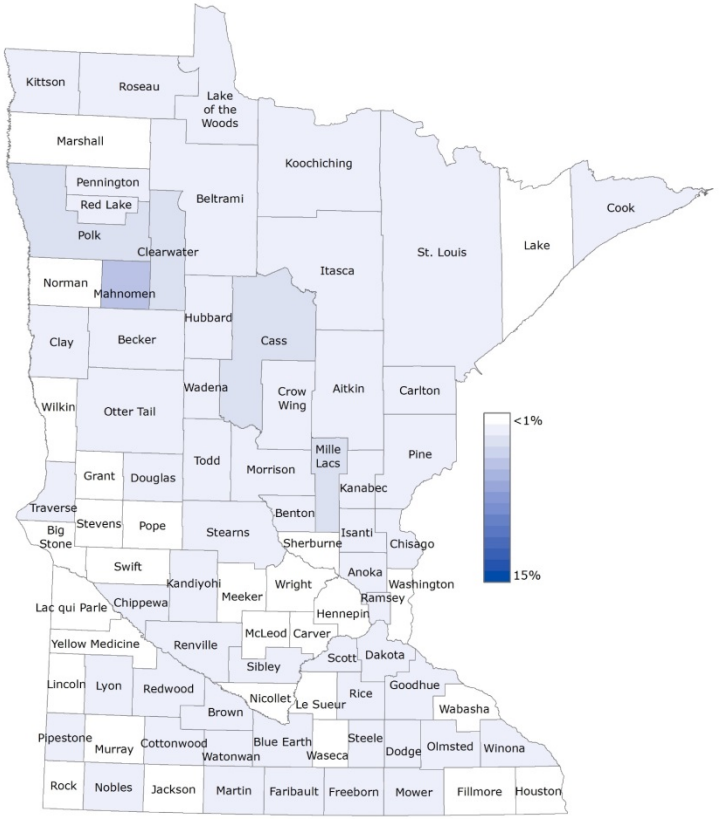
## In a state like Minnesota, the disenfranchisement rate is …

A. High in the big city (Minneapolis), low elsewhere

B. High in 5-county metro area, low elsewhere

C. Dispersed throughout the state

# Minnesota (Rob Stewart)

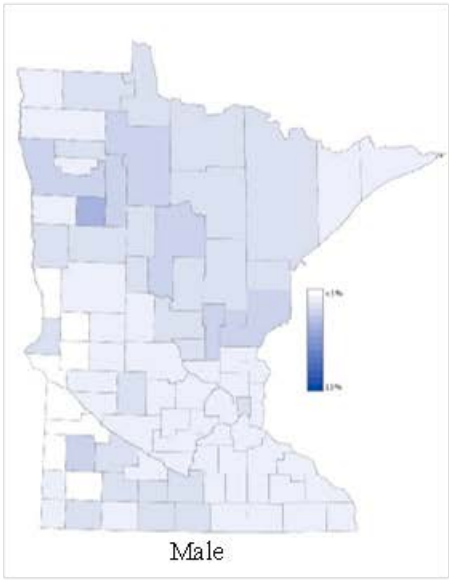


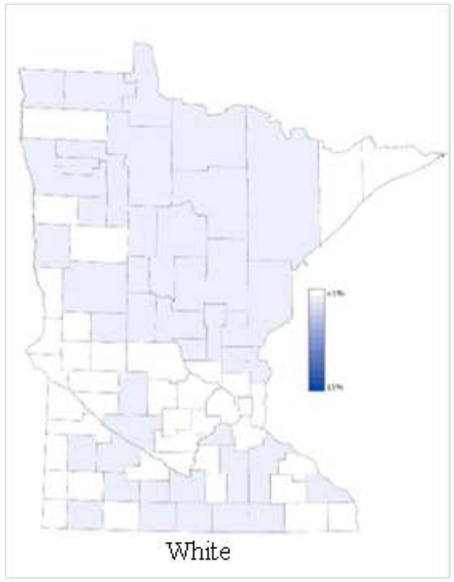

- **Probation and parole**
- **Disenfranchised *throughout* the state**
- **Not just a Minneapolis or Twin Cities issue**
- **Men, Communities of Color**

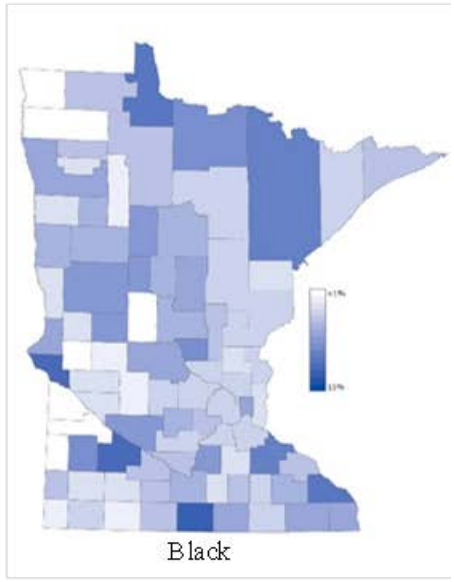
**Across Minnesota, which of these communities faces the highest rate of felon disenfranchisement?**

A. American Indian
B. Latinx
C. Asian American

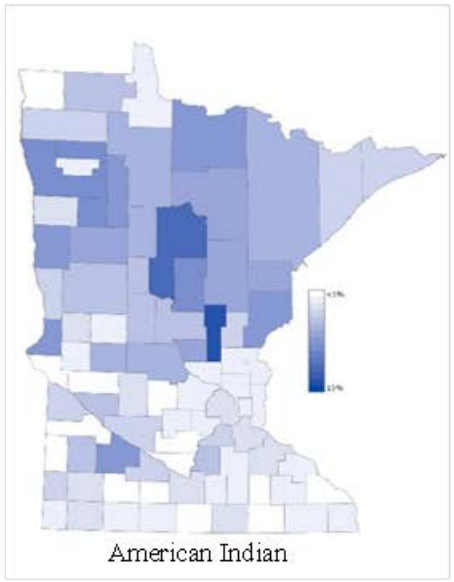
Figure 3b. Disenfranchised by Sex and Race, 2014.

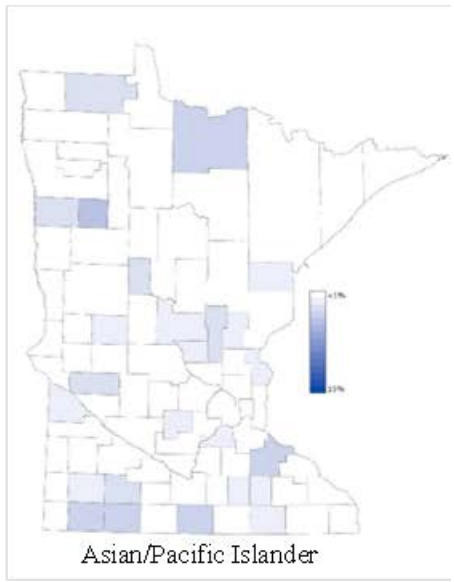

Male


White

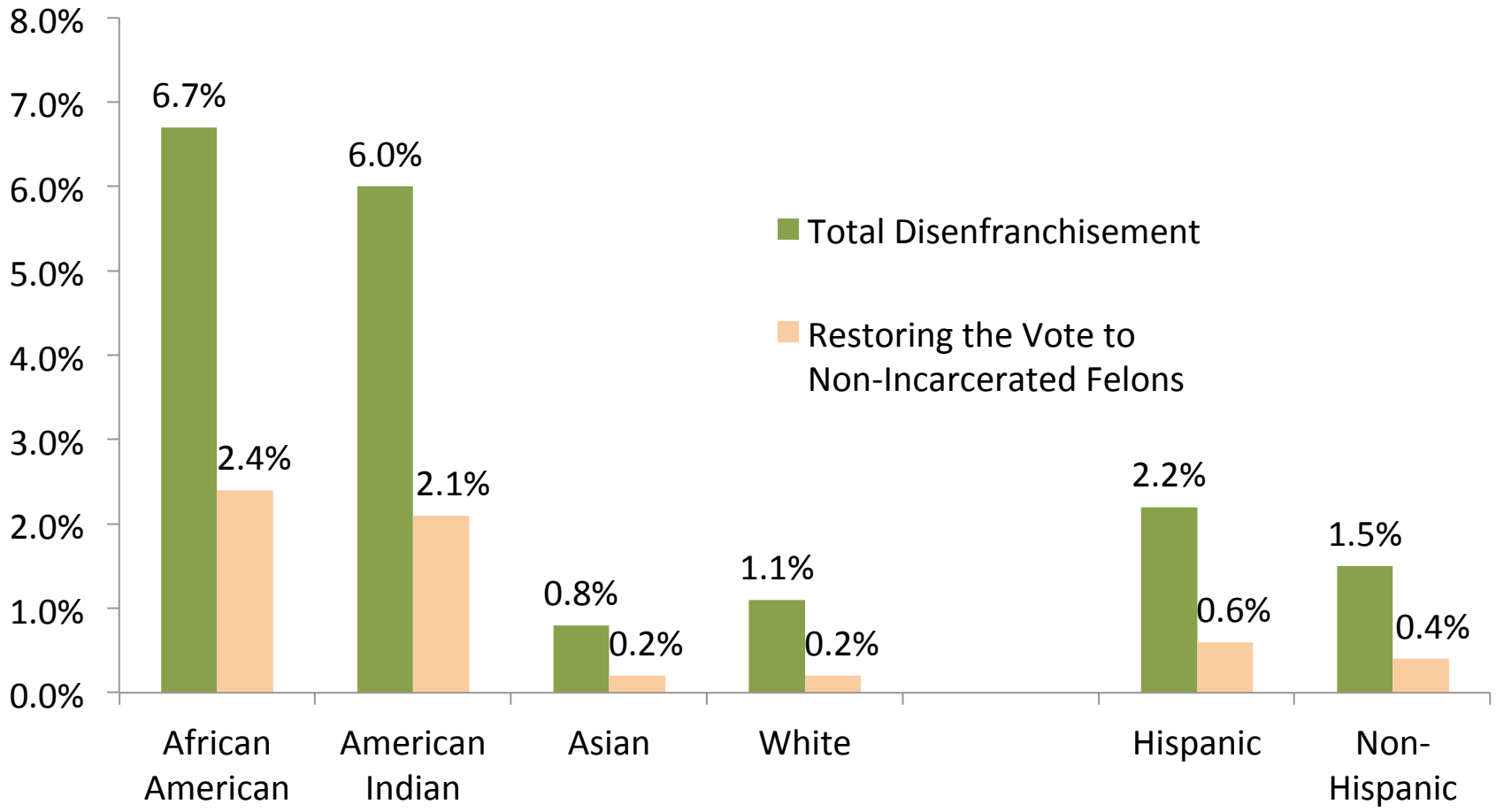

Black


Female


American Indian

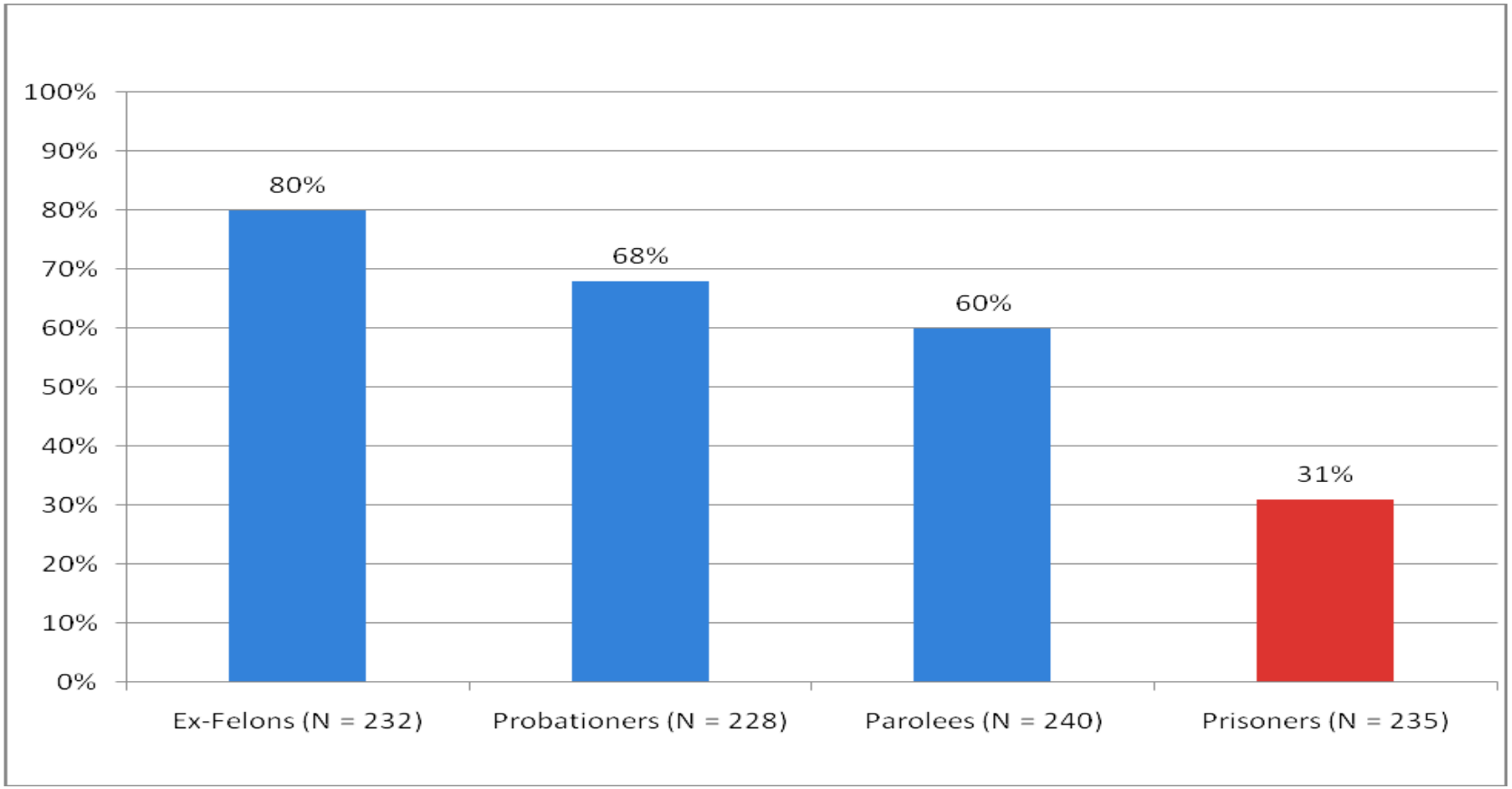

Asian/Pacific Islander

# reducing MN disparities (2014)



# III. does the US public support reenfranchisement?

**Yes for post-sentence (80%), probation (68%), and parole (60%), but not for prison (31%) (*Public Opinion Quarterly*, with Manza and Brooks)**



# US residents are most supportive of voting rights for which offense category?

A. Unspecified "former felon"

B. Violent crime

C. White-collar crime

D. Sex offense

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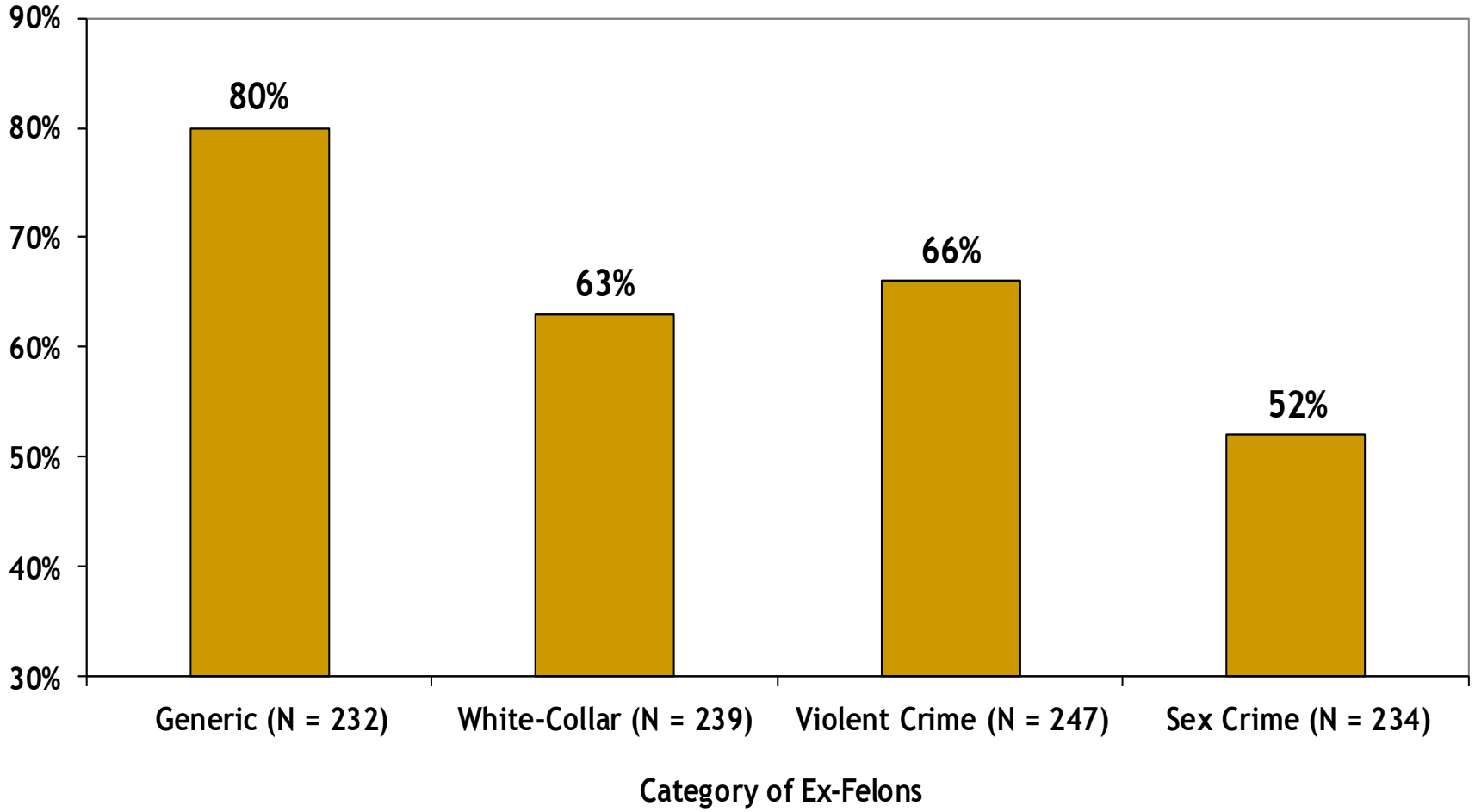
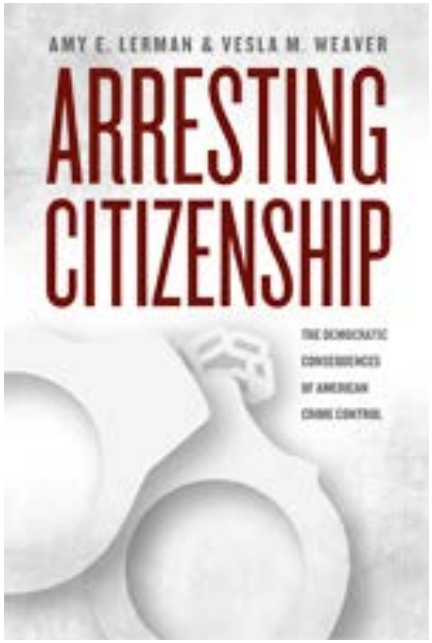
D. Sex offense

# support weakens with "framing"

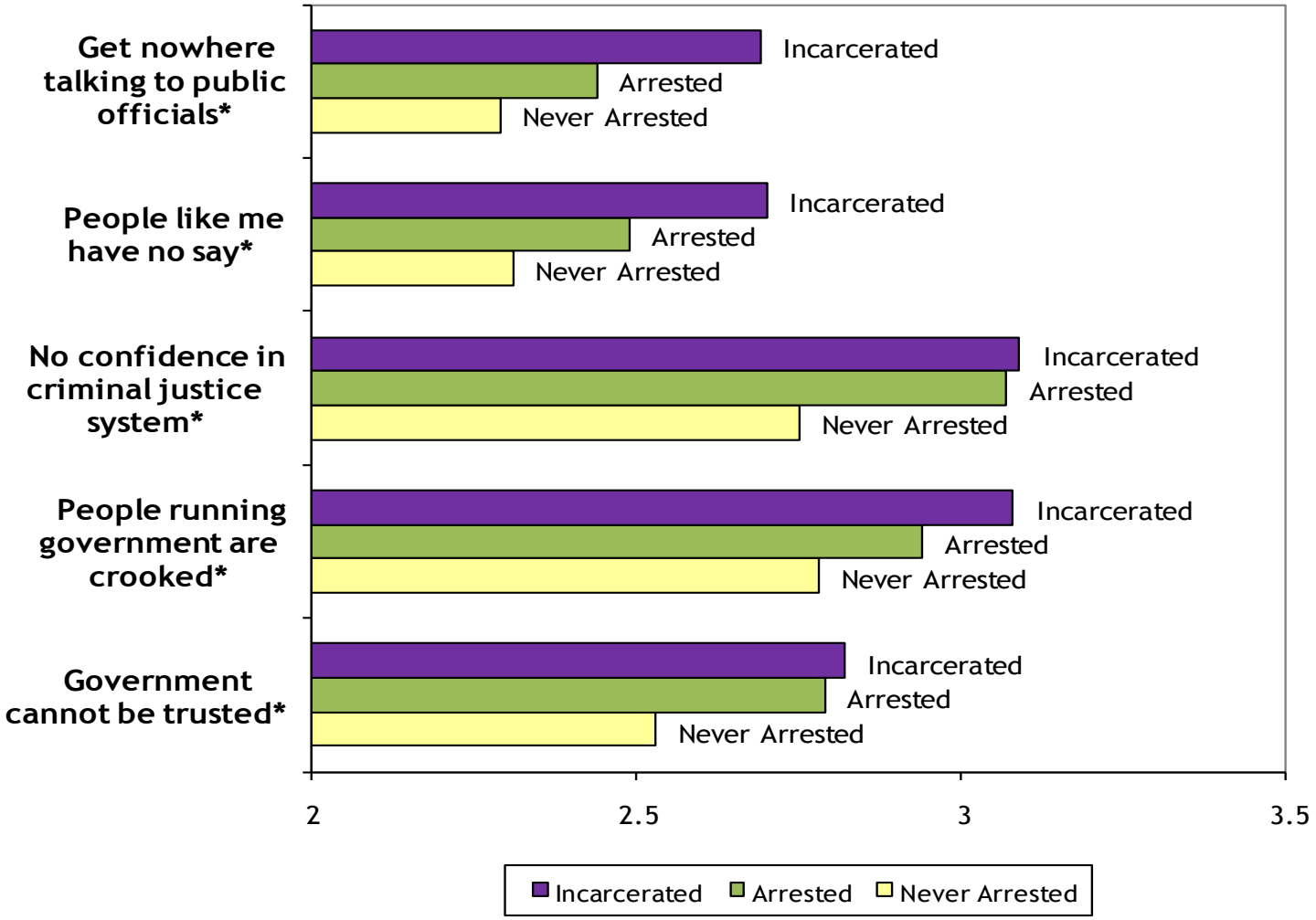


# IV. meaning - political life of felons
## *Imprisoning America*, with Manza 2004

- ***General survey: Youth Development Study***
- ***Those who experience criminal sanctions***
  - **…have lower turnout, but much of the effect is due to differences in education**
  - **…are less trusting of the government and express lower levels of political efficacy**
  - **…may be more likely to self-identify as political independents**
- ***Lerman & Weaver 2014***
  - **diverse forms of participation**
  - **gradient**
  - **System Avoidance" (Brayne; Goffman)**



# political trust and efficacy



# Dylan: illogic

- ***What is the fear that someone who has committed a felony would actually have a voice?... we're going to have some organized crime guy running for office, and we're all going to get behind him?...They have the expectation that you're going to reintegrate back into society, become a functioning, contributing member of society. But yet you're not allowed to have a say-so... which again makes no sense. The whole principle of our legal system is you pay your debt. Debt's done, you move on.***

# Paul – taxation & voice

- ***I have no right to vote on how my taxes is going to be spent or used, which I have to pay whether I'm a felon or not. …I'm not saying give back gun rights or anything like that … But giving back voting rights is another way to make a person feel part of that community… when they [say], 'What are you going to give back to the community for this and for that?' I'm like well, hey, community doesn't want a damn thing to do with me.***

# Peter – a racial thing

- ***I think that they just want less blacks to vote, you know what I'm saying? 'Cause 90% of people's that's in jail, they's black anyway, or on probation or whatever….  Less black people to vote, you know? … When less of us vote, that's more for the other races to vote… We the most people that's overcrowding the jails so that's why I think it's a racial thing towards us… I mean, it's a white world…***

# V. might voting affect crime?

- ***MN general population***
  - **16% non-voters v. 5% voters arrested in**
- ***OR parole & probation (Inderbitzin)***
  - **26% non-voters v 19% voters**
- ***Match MN voting and prison record***
  - **17-20% voted; 7% lower recidivism for voters**
  - **time-varying: much lower for voters in the previous biennial election than for non-voters, net of age, marriage, race, gender, offense, sentence length, property ownership…**
- ***New experiment shows increased turnout, but no crime effect (Gerber, Huber, Biggers, Hendry 2014)***

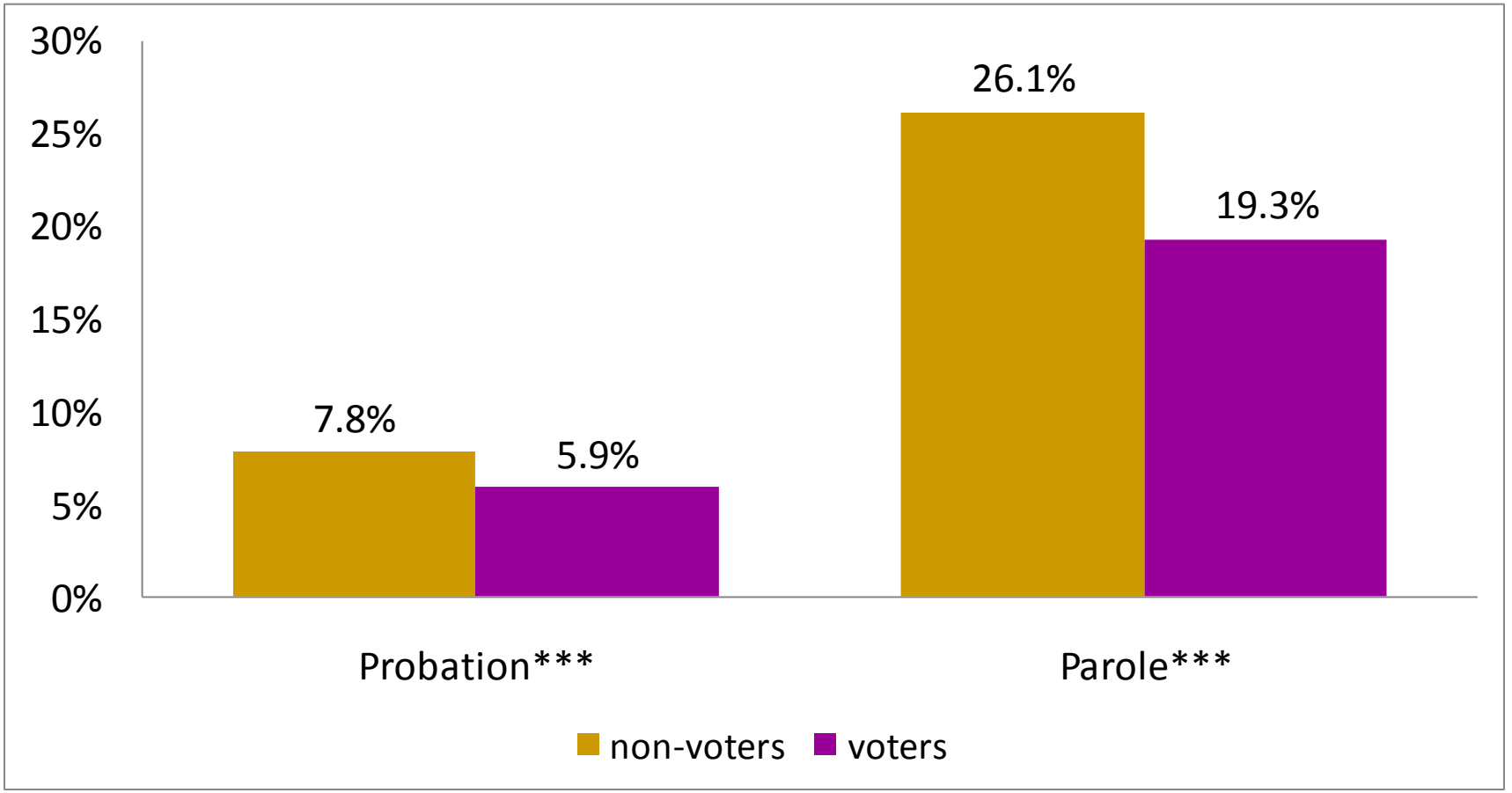
# motivation from criminology

- ***informal social controls***
  - **work, family (Sampson & Laub)**
  - **military**
- ***voting as reintegrative v. stigmatizing (Braithwaite)***
  - **restorative justice, deviant decertification**
- ***identity and cognitive shifts***
  - **cognitive shifts and generativity (Maruna)**
  - **catalysts and hooks for change (Giordano, Schroeder, & Cernkovich)**

# from democratic theory

- ***voting as educative or constitutive (de Tocqueville; Mill)***
  - **participation leads to identification with the polity and its norms and values**
- ***voting as expressive***
  - **democracy molds 'virtuous' citizens**
  - **"voting is a meaningful participatory act through which individuals create and affirm their membership in the community and thereby transform their identities both as individuals and as part of a greater collectivity" (Winkler 1993)**

# probationers and parolees who vote in Oregon have significantly lower recidivism rates



# provisional answers to 5 questions

***I. Impact?***

- **Parties can ignore preferences of 6.1 million poor**
- **Close Republican victories in states with very strict laws**

***II. Origins?***

- **Old idea, tied to racial conflict in the U.S.**

***III. Does public want strict felon voting laws?***

- **No. Most only want inmates banned**

***IV. Do felons care about voting?***

- **Yes, but other rights are more salient**

***V. Is voting linked to crime?***

- **<u>Yes</u>, it is correlated; it <u>may</u> reinforce an identity as a law abiding citizen; but not established as causal**

# policy question: why reenfranchise?
## (Uggen & Inderbitzin 2009)

1. *Extend democracy*
2. *Reduce racial disparity in ballot access*
3. *Enhance (or not compromise) public safety*
4. *Respond to public sentiment*
5. *Accord with international standards*
6. *Serve reintegrative goals of community corrections*

# What should the law be in Ohio? In the US?

A. Disenfranchise post-sentence, plus probation, parole, prison
B. Status Quo (prison, probation, parole)
C. Reenfranchise probation & parole
D. Reenfranchise probation
E. Reenfranchise all

## The law is clear: Voting remains illegal in Minnesota for people on felony probation. How would you enforce this law as prosecutor?

**A.** Aggressively prosecute as new felony

**B.** Prosecute where there is clear evidence of intent

**C.** Resist prosecution

# unlawful voting: was the DA right?


- ***Non-enforcement v. repeal***
  - discretion and piling on
- ***Many paths***
  - courts, legislative, & executive
- ***Many strategies***
  - sever the link (prisoners too)
  - "when you're in you're in, when you're out you're out"
- ***Advocacy & framing***
  - universal appeal: fairness, rights, life course
  - tricky: race and moral authority of civil rights movement
  - tough sledding: international comparisons

# Supplemental Slides

# ongoing work w/ inderbitzin

- how prison experiences shape conceptions of citizenship and democracy
- what inmates learn about politics, democracy, power, and compromise while living in prison
- how this affects view of democracy and political participation if and when they are released
- data from prison and community (2005 YDS) samples (incarcerated in past 2 years)

# lessons learned within prison

- participation in democratic inmate clubs or grievance committees
  - leaders determined by popular vote
  - leadership then represents the voice of inmate members, and negotiates with administration and other clubs
  - leaders deal with raising funds, distributing funds, organizing events and panels, working closely with staff advisors

# responsibilities of inmate clubs

- **“Inmate clubs are a large part of *how we voice our concerns*. Stressed in elections is the ability to deal diplomatically with administration and other club presidents. Clubs handle issues like inmate pay raises, education, incentive levels, living conditions. Another big topic is advocating for inmates who have run-ins with administration and are not capable of doing so for themselves.” - David**

# becoming politically active within the prison

- **"I'm now interested in becoming politically active, in making an effort to change and affect my world (prison) through its limited political venues. Oregon State Penitentiary has approximately eight administratively approved social clubs. These clubs actively engage in lobbying for a myriad of things that are important to the inmate population: more yard time, better food, more education and extended visits with family. They also seek to work with outside organizations to help break the stereotypes that are associated with convicted criminals. I've become part of the governing body of one of the most influential groups (non-gang related) within this prison…**

# accountability in leading lifer's club

- **…Our "Lifer's Club" members have many differences, but one thing binds us together: *All have been convicted of intentionally taking the life of another*. The governing body – President, Vice President, Secretary, Finance Director, and Director of Rules – are elected by popular vote. We answer to the general body and are accountable for the orderly operations of club business and handling of club finances. Monthly meetings are held to update the general membership as to new developments within the prison and to seek suggestions on what the members would like to have addressed. Our local, state and federal governments could learn a few things about accountability from this club. Believe me when I say that it is not a healthy idea to betray the trust of this group of men."**

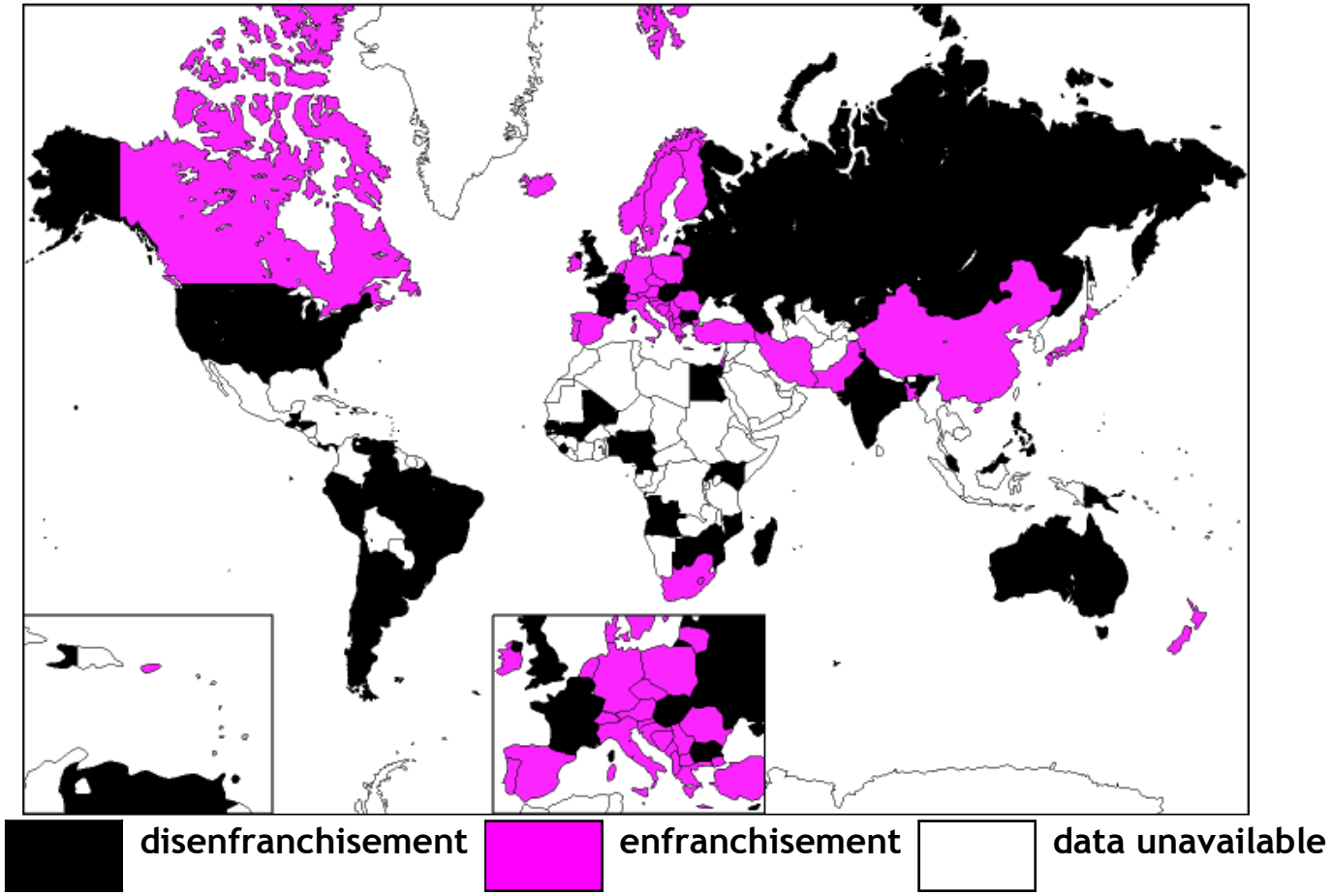
# ken's thoughts on democracy from within prison

- **A cornerstone of democracy is that every vote counts, every person has a "voice." Do prisoners count in our society? Do "offenders," in prison or not, count? Are they taught, shaped, molded to believe that they have worth, let alone a voice (that anyone wants to listen to)?**
- **Prisons rob people of their individuality, sense of self-worth, self esteem, personal power and *take away their ability to choose* to such a degree that you could see ex-cons standing in the bread section of a supermarket with tears rolling down their cheeks because they can't decide which loaf to buy. Should we expect people from that environment to vote, even if they have the right to do so?**

# prisons as democratizing institutions?

- caveats about generalizing from small number of inmates, but…
  - democracy in elections, in formal organizations, and in everyday life
  - some prison experiences may foster some forms of civic participation
- next step is longitudinal qualitative and quantitative work

# non-incarcerated felons vote almost everywhere but the U.S.; prisoners vote in at least 40 nations



# disenfranchised minnesotans, 1974-2016